

1	1	1	3
2	2	2	FEDERAL STIPULATIONS
3	3	3	
4	4	4	IT IS HEREBY STIPULATED AND AGREED by
5	5	5	and between the counsel for the respective
6	6	6	parties herein that the sealing, filing and
7	7	7	certification of the within deposition be
8	8	8	waived; that the original of the deposition
9	9	9	may be signed and sworn to by the witness
10	10	10	before anyone authorized to administer an
11	11	11	oath, with the same effect as if signed
12	12	12	before a Judge of the Court; that an
13	13	13	unsigned copy of the deposition may be used
14	14	14	with the same force and effect as if signed
15	15	15	by the witness, 30 days after service of the
16	16	16	original & 1 copy of same upon counsel for
17	17	17	the witness.
18	18	18	
19	19	19	IT IS FURTHER STIPULATED AND AGREED
20	20	20	that all objections except as to form, are
21	21	21	reserved to the time of trial.
22	22	22	
23	23	23	* * * *
24	24	24	
25	25	25	
1	2	1	4
2	2	2	R. LA TOUR, ESQ.
3	3	3	RHIANNON LA TOUR, ESQ, called
4	4	4	as a witness, having been first duly sworn
5	5	5	by a Notary Public of the State of New York,
6	6	6	was examined and testified as follows:
7	7	7	EXAMINATION BY
8	8	8	MR. ZELMAN:
9	9	9	Q. Please state your name for the
10	10	10	record.
11	11	11	A. Rhiannon La Tour, Esq.
12	12	12	Q. Where is your place of business?
13	13	13	A. Office of the District Attorney,
14	14	14	Richmond County, 130 Stuyvesant Place,
15	15	15	Staten Island, New York 10301.
16	16	16	Q. Good morning, Ms. La Tour. First
17	17	17	name?
18	18	18	A. Good morning. R-H-I-A-N-N-O-N,
19	19	19	Rhiannon.
20	20	20	Q. Good morning. My name is
21	21	21	David Zelman. I am the attorney for Robert
22	22	22	Tortora in a federal case pending in the
23	23	23	Eastern District of New York. We were
24	24	24	informed that you were the ADA assigned to a
25	25	25	case called People versus Tortora back in, I
			believe it was in 2015.
			1 (Pages 1 to 4)

1 R. LA TOUR, ESQ.  
 2 A. 2014.  
 3 Q. Thank you. I will ask you some  
 4 questions about that. And as you know, your  
 5 testimony is under oath?  
 6 A. Yes.  
 7 Q. How long have you been with  
 8 Richmond County DA's office?  
 9 A. Since February of 2009.  
 10 Q. And from 2009 to 2014, did you  
 11 have many different functions there or were  
 12 you assigned to the one particular role?  
 13 A. I had a few roles.  
 14 Q. The role that you were assigned to  
 15 in 2014, were you in that role for the  
 16 entire calendar year?  
 17 A. No.  
 18 Q. What was the role that you had in  
 19 April of 2014?  
 20 A. I was the line assistant in the  
 21 Special Victims Bureau.  
 22 Q. Okay. How long did you have that  
 23 role?  
 24 A. From October of 2010 until I  
 25 believe March of 2016.

1 R. LA TOUR, ESQ.  
 2 Q. So were you a line assistant when  
 3 you were involved in the prosecution of Mr.  
 4 Tortora?  
 5 A. Yes.  
 6 Q. Tell us what does the line  
 7 assistant do, day-to-day operation.  
 8 A. Handle cases. Prosecuting cases.  
 9 Q. Does that mean you were assigned  
 10 to specific cases?  
 11 A. Yes.  
 12 Q. And is it any specific type of  
 13 case that you would get as a line assistant?  
 14 A. In the Special Victims Bureau, I  
 15 would receive any case falling within that  
 16 category. Some misdemeanors, some felonies.  
 17 In that category would include domestic  
 18 violence cases, as well as felonies against  
 19 children, as well as sex assault cases.  
 20 Q. Okay. Now, is it true that you  
 21 were assigned to the Tortora case because it  
 22 had some relevance to domestic violence?  
 23 MS. BROWN: Objection. Go ahead.  
 24 A. I was assigned to the Tortora case  
 25 because I had previous involvement with

1 R. LA TOUR, ESQ.  
 2 Tricia Curulli.  
 3 Q. What was that previous  
 4 involvement?  
 5 A. I was assigned to prosecute a case  
 6 against Vincent Curulli where Tricia Curulli  
 7 was the victim.  
 8 Q. And what year was that?  
 9 A. I believe also 2014.  
 10 Q. Is that how you met Tricia  
 11 Curulli?  
 12 A. Yes.  
 13 Q. Then, this new case comes up and  
 14 why is it assigned to you, if you know?  
 15 A. I don't know. Because I did not  
 16 assign it.  
 17 Q. Okay. But you said -- is it the  
 18 custom or practice of the District  
 19 Attorney's office to assign you a second  
 20 case if you have already quote unquote  
 21 already represented the client on a prior  
 22 case?  
 23 MS. BROWN: Objection.  
 24 MS. GRADY: Objection.  
 25 A. Yes.

1 R. LA TOUR, ESQ.  
 2 Q. With respect to that prior case,  
 3 can you tell us the sum and substance of  
 4 that case? You said "assault case" is that  
 5 what it was?  
 6 MS. GRADY: Can you repeat the  
 7 question?  
 8 MS. BROWN: Can you repeat  
 9 question?  
 10 (Whereupon, the referred-to  
 11 question was read back by the  
 12 reporter.)  
 13 THE WITNESS: Do you want me to  
 14 answer?  
 15 MS. BROWN: Yes.  
 16 A. I did not say what kind of case it  
 17 was.  
 18 Q. Was it an assault case?  
 19 A. Yes, it was.  
 20 Q. What was the outcome of that case?  
 21 A. I don't know.  
 22 Q. Did it not go to trial?  
 23 A. I don't know.  
 24 Q. Were you assigned to that case  
 25 throughout the whole case?

1 R. LA TOUR, ESQ.  
2 A. I was not.  
3 Q. How much involvement did you have  
4 in that case, days, weeks, months?  
5 A. I don't know exactly how long.  
6 Q. Is there a reason that you were  
7 stopped in the middle of that case?  
8 A. I went on leave.  
9 Q. When were you on leave?  
10 A. I left for a planned leave in  
11 August of 2014.  
12 Q. To when?  
13 A. February of 2015.  
14 Q. So with respect to this case  
15 against Mr. Tortora, what is the first  
16 information that you got and from what  
17 source?  
18 MS. BROWN: Objection. Just for  
19 clarification, I will say objection,  
20 you can still answer the question  
21 unless I direct you not to answer and  
22 direct you not to answer.  
23 A. I received the file that contained  
24 various paperwork. And that was the first I  
25 got it.

1 R. LA TOUR, ESQ.  
2 Q. Who did you receive it from?  
3 A. It was just assigned to me.  
4 Q. Was it the supervisor who assigned  
5 it to you?  
6 A. Usually supervisors assign cases.  
7 Q. Do you know who it was?  
8 A. I don't know who assigned it to  
9 me.  
10 Q. Were there discussions with the  
11 supervisor at that time that it was being  
12 assigned to you because you had involvement  
13 with the victim?  
14 A. No.  
15 MS. GRADY: Objection.  
16 Q. So when you got the file, do you  
17 remember what day that was?  
18 A. No.  
19 Q. Do you have any notes about that,  
20 what day you received the file?  
21 A. No.  
22 Q. Did you review anything to prepare  
23 for today's deposition?  
24 A. Yes.  
25 Q. What did you review?

1 R. LA TOUR, ESQ.  
2 MS. GRADY: Objection.  
3 Q. You can answer. As a general rule  
4 unless you get instructed not to answer, you  
5 can answer.  
6 MR. ZELMAN: I have had this issue  
7 before. Judges allow it.  
8 A. The Discovery that you received.  
9 Q. Okay. And do you remember what  
10 you got? What was in the file? What  
11 documents were in the file?  
12 A. I believe it was turned over to  
13 you. Which would have been the District  
14 Attorney's office data sheet, the Complaint  
15 drafted by an Assistant District Attorney,  
16 the Notice given at that arraignment,  
17 various police reports.  
18 Q. When you got the file, the  
19 arraignment had already happened?  
20 A. That's correct.  
21 Q. Do you remember how long after the  
22 arraignment you got the file, a day, a week,  
23 a month, something else?  
24 A. I don't recall the exact day.  
25 Q. Okay. Do you remember

1 R. LA TOUR, ESQ.  
2 approximately how long it would have been?  
3 A. It was less than a month.  
4 Probably more than a day.  
5 Q. Do you remember speaking to  
6 anybody at the District Attorney's office  
7 about the case? Did you have any  
8 conversations with the ADA who handled this  
9 case; if you recall?  
10 MS. GRADY: Objection. Privilege.  
11 Do not answer.  
12 MR. ZELMAN: If she had  
13 conversations.  
14 MS. GRADY: Whether she had  
15 conversations or not.  
16 A. No.  
17 Q. You did not have conversations?  
18 A. I did not.  
19 Q. Okay. So when you picked up the  
20 file and read through it, what did you learn  
21 about the case?  
22 MS. BROWN: Objection. You can  
23 answer.  
24 MS. GRADY: Go ahead.  
25 A. Just what was in the document. I

1 R. LA TOUR, ESQ.  
 2 read all of the documents.  
 3 Q. Okay. So just give us like a  
 4 synopsis of what you learned about the case?  
 5 A. So I learned that Tricia Curulli's  
 6 babysitter was home. Tricia Curulli was not  
 7 home. The babysitter observed a truck pull  
 8 up to the shed or garage located at  
 9 Ms. Curulli's property or garage.  
 10 Individuals got out of the truck, broke the  
 11 lock on the shed, took various items out of  
 12 the shed, pulled away.  
 13 I learned that Robert Tortora had  
 14 been identified. There was a line up.  
 15 Robert Tortora was arrested. He made a  
 16 statement to the police. And that's the  
 17 synopsis of the case I guess.  
 18 Q. Okay. Now, at any point, did you  
 19 have pictures in the file?  
 20 A. Yes.  
 21 Q. What pictures did you have?  
 22 A. I believe there was some sort of  
 23 photograph of Mr. Tortora with writing on it  
 24 by the eyewitness. And there were pictures  
 25 of a truck by a shed. That was the shed

1 R. LA TOUR, ESQ.  
 2 that was identified as the shed located on  
 3 Ms. Curulli's property.  
 4 Q. This picture of Mr. Tortora, was  
 5 this a picture taken at the scene of the  
 6 incident or some other time?  
 7 A. I don't know when it was taken.  
 8 It does not appear to be at the house.  
 9 Q. Okay. So it is a picture of him  
 10 looking at the picture smiling, that kind of  
 11 thing?  
 12 A. I believe so.  
 13 Q. Were you informed of where that  
 14 picture came from or how that picture got  
 15 into the file?  
 16 A. I don't believe so.  
 17 Q. Did you ever come to learn how it  
 18 came to be in the file?  
 19 A. I don't believe so.  
 20 Q. Were there any other pictures of  
 21 people in the file?  
 22 A. I don't believe so.  
 23 Q. The eyewitness testified that she  
 24 provided the police officers with pictures  
 25 of the people who were at the scene of the

1 R. LA TOUR, ESQ.  
 2 incident, did you ever view that?  
 3 A. I don't --  
 4 MS. BROWN: Objection.  
 5 A. I don't believe so.  
 6 Q. Did you ever learn if there were  
 7 other pictures that there were not made  
 8 available to you?  
 9 MS. BROWN: Objection.  
 10 A. No, I did not learn of any other  
 11 pictures.  
 12 Q. Now, when you picked up the file,  
 13 you said Mr. Tortora had given a statement;  
 14 is that right?  
 15 A. Yes.  
 16 Q. What was that?  
 17 A. I can't recall the exact  
 18 statement. I believe the sum and substance  
 19 of the statement was that Mr. Curulli had  
 20 asked him to pick up some property for him  
 21 at the house. I believe part of the  
 22 statement was also that he was not in  
 23 Staten Island when the event occurred.  
 24 Q. Were you made aware of any alibi  
 25 evidence when you got the file or

1 R. LA TOUR, ESQ.  
 2 thereafter?  
 3 MS. GRADY: From whom?  
 4 MR. ZELMAN: At any point from  
 5 anybody.  
 6 MS. GRADY: Objection. Go ahead.  
 7 THE WITNESS: Can I answer now?  
 8 MS. GRADY: If you understand the  
 9 question.  
 10 A. I was made aware that there was --  
 11 that Mr. Tortora was saying he was in Ocean  
 12 City, Maryland at the time of the incident.  
 13 Q. Other than that, were you provided  
 14 a video of him?  
 15 A. I was never provided a video.  
 16 Q. Do you remember the source of that  
 17 information: Was it through his statement  
 18 that he was claiming to be there?  
 19 MS. BROWN: Objection.  
 20 A. His statement was one source of  
 21 information.  
 22 Q. And what other source of  
 23 information was it that you recall about  
 24 Ocean City, Maryland or about him being in  
 25 Ocean City, Maryland?

1 R. LA TOUR, ESQ.  
 2 MS. BROWN: Objection.  
 3 A. So his defense attorney said  
 4 something about it.  
 5 Q. And that was one of the  
 6 appearances that you attended?  
 7 A. I never attended an appearance in  
 8 court.  
 9 Q. How were you made aware of what  
 10 defense counsel said, from a report or  
 11 another ADA?  
 12 A. I know at one point that I had a  
 13 conversation with a defense attorney.  
 14 Q. Okay. Was there any video in the  
 15 file of Ocean City, Maryland showing him  
 16 being in Ocean City, Maryland at the time of  
 17 the incident?  
 18 A. No.  
 19 Q. Were you ever provided with that?  
 20 A. No.  
 21 Q. There has been testimony in this  
 22 case that a retired detective spoke to  
 23 investigating officer, I think Mr. Danziger,  
 24 about being with Mr. Tortora in Ocean City,  
 25 Maryland at the time of the incident, were

1 R. LA TOUR, ESQ.  
 2 you ever made aware from any source about  
 3 Mr. Keen's statement with Mr. Danziger?  
 4 MS. BROWN: Objection.  
 5 A. I don't believe so.  
 6 Q. Did you ever have a conversation  
 7 with Mr. Danziger?  
 8 A. I don't believe so.  
 9 Q. Did you ever speak to anybody, any  
 10 officer, employed officer about this case  
 11 during the prosecution of this case?  
 12 A. I don't believe so.  
 13 Q. Did anyone try to contact you?  
 14 MS. BROWN: Objection.  
 15 A. I would not know if somebody tried  
 16 to contact me.  
 17 Q. To the best of your recollection,  
 18 how many appearances were there in this  
 19 case?  
 20 A. I don't know.  
 21 Q. Do you remember how many months it  
 22 lasted?  
 23 A. I don't know. I went on leave in  
 24 August of 2014.  
 25 Q. So let us get a time frame here.

1 R. LA TOUR, ESQ.  
 2 When was this arrest?  
 3 A. I believe it was May of 2014.  
 4 Q. The arrest?  
 5 A. I believe so.  
 6 Q. So when did you handle this case?  
 7 A. It would have been from May of  
 8 2014 until August of 2014.  
 9 Q. I thought -- I got it. Was the  
 10 case dismissed from before you left?  
 11 A. It was still open when I left.  
 12 Q. So you handled this case from May  
 13 to August 2014?  
 14 A. Yes.  
 15 Q. At any point, did you make a  
 16 decision about what to do with the case?  
 17 A. Yes.  
 18 Q. What was that decision?  
 19 A. At that point in time, I was not  
 20 going to indite the case.  
 21 Q. And do you remember when that  
 22 decision was made?  
 23 A. I'm sorry?  
 24 Q. Do you remember when that decision  
 25 was made?

1 R. LA TOUR, ESQ.  
 2 A. No.  
 3 Q. Let me show you what has been  
 4 marked as Defendant's Exhibit 73 for  
 5 identification.  
 6 MS. BROWN: Can we have this  
 7 marked by the court reporter as an  
 8 exhibit, Plaintiff's Exhibit 1.  
 9 (Whereupon, the aforementioned  
 10 City's Def-73/buck sheet, was marked as  
 11 Plaintiff's Exhibit 1, for  
 12 identification as of this date by the  
 13 reporter.)  
 14 MR. ZELMAN: I'll take a quick  
 15 break.  
 16 (Whereupon, a short recess was  
 17 taken.)  
 18 MR. ZELMAN: Back on the record.  
 19 I am showing the witness what has been  
 20 marked as Defendant's 73.  
 21 Q. Do you recognize that document?  
 22 A. I do.  
 23 Q. Is your handwriting on there?  
 24 A. I see my handwriting a little bit.  
 25 Q. Show us where.

1 R. LA TOUR, ESQ.  
 2 A. So, my handwriting is that little  
 3 "no grange reaction, no offer, 918, part  
 4 one."  
 5 Q. Do you see where it says "Brady on  
 6 inside note put on record?"  
 7 A. I see that.  
 8 Q. What does that refer to?  
 9 A. Based on my recollection of the  
 10 court file, there was a note on the inside  
 11 that listed brady material. "Brady" is  
 12 exculpatory information that has to be  
 13 provided to the Defendant.  
 14 Q. So what was it?  
 15 MS. GRADY: Objection.  
 16 MR. ZELMAN: She said it was put  
 17 on the record.  
 18 A. I didn't say it was put on the  
 19 record. I said the note was put on record.  
 20 Q. All right. So what was the brady  
 21 material? If you recall.  
 22 MS. GRADY: Objection. If you  
 23 know.  
 24 A. So I believe it had to do with --  
 25 not sure -- with the identification

1 R. LA TOUR, ESQ.  
 2 procedure.  
 3 Q. Does that mean the lineup?  
 4 MS. BROWN: Objection.  
 5 A. It would refer to the lineup.  
 6 Q. Do you know specifically what was  
 7 said on the record regarding the lineup?  
 8 A. I don't.  
 9 Q. Do you know when that was put on  
 10 the record?  
 11 A. I don't know if it was put on the  
 12 record. I know the note says put it on the  
 13 record.  
 14 Q. Did you speak to Ms. Curulli about  
 15 this case?  
 16 A. I believe so.  
 17 Q. Was that at your office, or some  
 18 other location, over the phone?  
 19 A. I believe over the phone while I  
 20 was in my office.  
 21 Q. Do you remember if you spoke to  
 22 her once or more than once?  
 23 A. I don't recall.  
 24 Q. She was not a witness to this  
 25 incident, right?

1 R. LA TOUR, ESQ.  
 2 A. An eyewitness?  
 3 Q. Right.  
 4 A. No.  
 5 Q. What did she tell you?  
 6 A. I don't recall her exact words.  
 7 The sum and substance would be that it was  
 8 her house. That her babysitter was there,  
 9 but she was not. And basically a recap of.  
 10 The story that the babysitter had told the  
 11 police according to what was in the police  
 12 records.  
 13 Q. Okay. Did she ever say she  
 14 thought it was Mr. Tortora who did this  
 15 crime or not?  
 16 A. I don't remember.  
 17 MS. BROWN: Objection. Go ahead.  
 18 A. I don't recall.  
 19 Q. Did you ever speak to the  
 20 eyewitness?  
 21 A. I believe so.  
 22 Q. Is that also over the phone?  
 23 A. I don't believe so.  
 24 Q. Did you ever speak to her in  
 25 person?

1 R. LA TOUR, ESQ.  
 2 A. No.  
 3 Q. Was it one time or more than one  
 4 time?  
 5 A. I don't recall.  
 6 Q. Did she call you or did you call  
 7 her?  
 8 A. I would have called.  
 9 Q. Would you have called her when you  
 10 received the file or contemporaneous with  
 11 that?  
 12 A. Yes.  
 13 Q. What did she say to you?  
 14 A. Basically what would have been in  
 15 the file. That she was at the house,  
 16 Ms. Curulli was not. A truck pulled up,  
 17 pictures were taken of the truck. I believe  
 18 she took pictures of the truck.  
 19 People had gotten out, went into  
 20 the shed, took property out of the shed,  
 21 they drove off.  
 22 Q. Did she say she recognized  
 23 anybody?  
 24 A. She did not know them.  
 25 Q. Did you ask her about whether she

1 R. LA TOUR, ESQ.  
 2 was able to see them, like their faces?  
 3 A. I don't recall.  
 4 Q. Did she say that she saw their  
 5 faces?  
 6 A. I don't recall.  
 7 Q. Did she say how, did you ask her  
 8 how she was able to identify anybody?  
 9 A. I don't recall if I asked her  
 10 that.  
 11 Q. Do you remember if she said  
 12 anything about that?  
 13 A. My recollection of the story was  
 14 that she said that she gave description to  
 15 Tricia. And she was shown pictures I  
 16 believe from a wedding album of people that  
 17 Tricia thought it could have been. And that  
 18 she picked somebody out from those pictures.  
 19 And subsequent to that, she picked  
 20 Mr. Tortora out of a lineup.  
 21 Q. And to the best of your knowledge,  
 22 when Ms. Curulli showed pictures to her from  
 23 the wedding album, were the officers there  
 24 at that time?  
 25 A. According to the story? According

1 R. LA TOUR, ESQ.  
 2 to the story, no. This would have been  
 3 before the police report was even made.  
 4 Q. When you say "the story," what do  
 5 you mean by that?  
 6 A. The recounting of the incident.  
 7 Q. By who?  
 8 A. By I believe both Mr. Deluca and  
 9 Ms. Curulli.  
 10 Q. With respect to the truck, were  
 11 you able to gain any plate information, et  
 12 cetera with the truck?  
 13 A. Not that I recall.  
 14 Q. Do you remember any investigation  
 15 that was done as to whose truck it was?  
 16 A. I believe so.  
 17 Q. What was the -- just if you can  
 18 recount that investigation.  
 19 A. I don't recall. It was not done  
 20 by me.  
 21 Q. Do you remember the results of it?  
 22 A. I don't recall.  
 23 Q. Do you remember if besides  
 24 Ms. Deluca's alleged identification, do you  
 25 recall any other evidence against

1 R. LA TOUR, ESQ.  
 2 Mr. Tortora in the case?  
 3 MS. BROWN: Objection. Go ahead.  
 4 A. I thought his statement was  
 5 evidence against him.  
 6 Q. Okay. Anything else?  
 7 A. I don't know what you mean.  
 8 Q. Anything else that was inculpatory  
 9 other than her statement and his statement.  
 10 A. I think that is a hard question to  
 11 answer if you are talking about physical  
 12 evidence.  
 13 Q. Okay.  
 14 A. No, there was not.  
 15 Q. How about the neighbor's  
 16 statements?  
 17 A. I don't recall neighbor's  
 18 statements. I do recall a neighbor  
 19 confirmed with the police according to the  
 20 detective's notes that a neighbor also saw a  
 21 truck pull up I believe.  
 22 Q. Okay. But the neighbor did not  
 23 say who was in the truck or provided a  
 24 description?  
 25 A. I don't believe so.

1 R. LA TOUR, ESQ.  
 2 Q. Was there surveillance of the  
 3 truck driving away, if you know?  
 4 A. All I know about are the pictures.  
 5 Q. Do you know if the property was  
 6 ever recovered?  
 7 A. Not to my knowledge.  
 8 Q. Do you know if the lock was broken  
 9 to get into the shed or something else?  
 10 A. That is my recollection of the  
 11 account. He said that the lock was broken.  
 12 Q. Did they collect the broken lock?  
 13 A. I don't recall.  
 14 Q. Were you able to ascertain this  
 15 property in the shed was Ms. Curulli's?  
 16 MS. BROWN: Objection.  
 17 A. The information that I received  
 18 from Ms. Curulli herself is that it was  
 19 Mr. Curulli's property.  
 20 Q. Okay. Did you ever attempt to  
 21 contact Mr. Curulli?  
 22 A. No.  
 23 Q. Any reason?  
 24 A. At that point in time, he was  
 25 still a Defendant represented by counsel in

1 R. LA TOUR, ESQ.  
 2 another case I believe.  
 3 Q. All right. As he became a victim  
 4 in this case if his property was stolen,  
 5 right?  
 6 A. No.  
 7 MS. BROWN: Objection.  
 8 Q. You said it was Ms. Curulli it was  
 9 Mr. Curulli's property?  
 10 A. That's correct.  
 11 Q. So his property was stolen, right?  
 12 A. No.  
 13 Q. Why not?  
 14 A. According to my previous  
 15 testimony, the statement by Mr. Tortora, was  
 16 that Mr. Curulli asked him to get his  
 17 property.  
 18 Q. Right. I thought you said  
 19 Ms. Curulli told you that the property  
 20 belonged to Mr. Curulli?  
 21 A. That's correct. And Mr. Tortora  
 22 said Mr. Curulli asked him to take his  
 23 property.  
 24 Q. Okay. What I am saying is, if the  
 25 property was stolen and it belonged to

1 R. LA TOUR, ESQ.  
 2 Mr. Curulli, he is a victim in that case?  
 3 A. No.  
 4 Q. Why not?  
 5 A. Not if he is the one who asked his  
 6 friend Mr. Tortora to take his property for  
 7 him.  
 8 Q. I see. Did you ever get receipts  
 9 for the property?  
 10 A. No.  
 11 Q. What was stolen, if you recall?  
 12 A. I don't recall everything. I do  
 13 recall a boat motor. I don't recall  
 14 anything else. The boat motor sticks out to  
 15 me.  
 16 Q. Were you ever made aware of a  
 17 controlled call to Mr. Curulli in the case?  
 18 A. Not at the time of the incident.  
 19 Q. At the present time during your  
 20 prosecution of the case?  
 21 A. No.  
 22 Q. I take it that you learned about  
 23 it long after?  
 24 A. Yes.  
 25 Q. Did you ever speak to the ADA who

1 R. LA TOUR, ESQ.  
 2 took the data sheet?  
 3 A. No.  
 4 Q. Did you ever speak to a Defendant,  
 5 Donnelly about the case?  
 6 A. Detective?  
 7 Q. Yes.  
 8 A. No.  
 9 Q. To the best of your knowledge,  
 10 were you made aware that Mr. Tortora claimed  
 11 to have been driving in a vehicle with a  
 12 retired judge around the time of this  
 13 incident?  
 14 A. I don't recall.  
 15 Q. So the only information that you  
 16 had about the alibi defense was from  
 17 Mr. Tortora himself; is that correct?  
 18 A. No.  
 19 Q. What other source of information  
 20 about the alibi did you have?  
 21 A. At some point during the  
 22 prosecution of the case from his defense  
 23 attorney at the time, I received copies of  
 24 receipts from gas stations as well as a  
 25 printed out copy of hotel reservation

1 R. LA TOUR, ESQ.  
 2 confirmation. I believe that is the extent  
 3 of the information that I got.  
 4 Q. All right. Did you discuss that  
 5 with defense counsel?  
 6 A. I did.  
 7 Q. Tell us the sum and substance of  
 8 that discussion.  
 9 A. I did not find the receipts for  
 10 the gas stations very helpful, because there  
 11 was no name on any of the receipts. They  
 12 were just receipts for gas stations.  
 13 And the printed out confirmation,  
 14 I did not find very helpful. Because it was  
 15 a printed out booking confirmation. It does  
 16 not mean that he actually went there.  
 17 I did not receive anything other  
 18 than that. I believe a video was mentioned  
 19 at some point. It was never provided to me.  
 20 Q. Apparently according to the  
 21 original data sheet, there were two males  
 22 involved in the case. Do you remember any  
 23 investigation done as to the other male?  
 24 MS. BROWN: Objection.  
 25 A. No.



1 R. LA TOUR, ESQ.  
 2 Q. Do you remember any discussions  
 3 about who that might have been?  
 4 A. I don't remember any discussions.  
 5 Q. It also says that there was a  
 6 black power washer in the bed of the pickup  
 7 truck; does that refresh your recollection  
 8 as to what was allegedly stolen?  
 9 A. I don't know. All I recall was  
 10 the boat motor. It stuck out to me. I know  
 11 the other items were various sorts of, you  
 12 know, tools or lawn stuff that would have  
 13 been in a shed. But I don't recall.  
 14 Q. Did Ms. Curulli say those things  
 15 belonged to her ex?  
 16 MS. BROWN: Objection.  
 17 A. She told me everything that was  
 18 taken belonged to her ex.  
 19 Q. Did you ever meet Mr. Tortora?  
 20 A. No.  
 21 Q. Did you ever see him in court?  
 22 A. No.  
 23 Q. Were you ever made aware of any  
 24 health issues that he had?  
 25 MS. BROWN: Objection.

1 R. LA TOUR, ESQ.  
 2 A. No.  
 3 Q. Did you know the ultimate outcome  
 4 of this case?  
 5 A. As far as I know, it was  
 6 eventually dismissed.  
 7 MR. ZELMAN: Can we have this  
 8 marked for identification as  
 9 Plaintiff's Exhibit 2, for  
 10 identification?  
 11 (Whereupon, the aforementioned  
 12 document Bates Def-71 was marked as  
 13 Plaintiff's Exhibit 2, for  
 14 identification as of this date by the  
 15 reporter.)  
 16 MS. BROWN: What Bates number is  
 17 on that?  
 18 MS. GRADY: Defendant 71.  
 19 Q. Directing your attention to Bates  
 20 71; is that part of the court file for this  
 21 case?  
 22 A. Part of the court file?  
 23 Q. Yes.  
 24 A. No.  
 25 Q. Is it part of the DA file?

1 R. LA TOUR, ESQ.  
 2 A. Yes.  
 3 Q. Do you see your handwriting there  
 4 anywhere?  
 5 A. No.  
 6 Q. On the bottom it says "dismissed."  
 7 Can you read it?  
 8 A. "Cannot prove BRD."  
 9 Q. And B-R-D stands for?  
 10 A. Beyond Reasonable Doubt.  
 11 Q. That decision was made after you  
 12 left the DA's office, after you were on  
 13 leave; is that accurate?  
 14 A. When was the decision made or when  
 15 was this written?  
 16 Q. Either, if you know.  
 17 A. The dismissal happened after I  
 18 left.  
 19 Q. Okay. It was the decision of the  
 20 DA's office to dismiss the case, correct?  
 21 A. What I know is that I was not  
 22 going to indite the case.  
 23 Q. But by not inditing the case that  
 24 is not dismissing the case, right?  
 25 A. Not inditing the case is not the

1 R. LA TOUR, ESQ.  
 2 same as dismissing the case; that's correct.  
 3 Q. Sure. What is the difference?  
 4 A. Well, when you indite the case,  
 5 you present it to the Grand Jury. When you  
 6 dismiss the case, you make a motion to the  
 7 judge to have the charges dismissed.  
 8 Q. Okay. The decision not to indite,  
 9 that's made within eight days of the arrest;  
 10 is that right?  
 11 A. No.  
 12 Q. Okay. How long after the arrest  
 13 does the decision not to indite need to be  
 14 made?  
 15 A. You have six months to prosecute a  
 16 felony charge.  
 17 Q. Do you remember when the decision  
 18 was made not to indite in terms of vis-a-vis  
 19 the arrest?  
 20 A. I decided that I would not indite  
 21 the case. I don't recall exactly when. It  
 22 was after I was assigned the case, before I  
 23 left.  
 24 Q. Would you say it was towards the  
 25 beginning portion of when you got the case,

1 R. LA TOUR, ESQ.  
 2 towards the end, somewhere in the middle, or  
 3 something else?  
 4 MS. BROWN: Objection.  
 5 A. I would say it was made within the  
 6 first month.  
 7 Q. Okay. That document in front of  
 8 you indicates that at some point the  
 9 District Attorney's office decided to  
 10 dismiss the case because they could not  
 11 prove it beyond a reasonable doubt, correct?  
 12 A. That is what it indicates.  
 13 MS. BROWN: Objection.  
 14 THE WITNESS: Sorry.  
 15 Q. Did you ever have discussions with  
 16 anybody about that decision?  
 17 MS. GRADY: Objection. That calls  
 18 for privilege information.  
 19 MR. ZELMAN: If she had  
 20 discussions.  
 21 MS. GRADY: You are asking a very  
 22 content-specific question. Whether she  
 23 had a conversation with people about  
 24 the case being able to prove beyond a  
 25 reasonable doubt. That is privileged.

1 R. LA TOUR, ESQ.  
 2 MR. ZELMAN: I respectfully  
 3 disagree.  
 4 Q. Were you ever made aware that  
 5 there was a motion to dismiss made by the  
 6 District Attorney's office?  
 7 A. At a later time I found out that  
 8 the case was dismissed.  
 9 Q. Okay. Did you ever find out  
 10 before it was dismissed that someone planned  
 11 to have it dismissed?  
 12 MS. GRADY: Objection.  
 13 Privileged.  
 14 MR. ZELMAN: Privileged? I did  
 15 not ask about the conversation. I  
 16 asked if she became aware that someone  
 17 planned to make that motion.  
 18 MS. GRADY: How would she become  
 19 aware except through privileged  
 20 conversation? Okay, if she became  
 21 aware of it without it being a  
 22 privilege conversation.  
 23 A. I don't think that I ever became  
 24 aware of a specific plan to dismiss. The  
 25 natural outcome of deciding not to indict a

1 R. LA TOUR, ESQ.  
 2 case, that's a felony. It would be an  
 3 eventual dismissal based on you running out  
 4 of your 30-30 time.  
 5 Q. Got it. This case was not  
 6 dismissed on 30-30; this case was dismissed  
 7 by a motion of DA, correct?  
 8 MS. BROWN: Objection. You know,  
 9 if you know.  
 10 A. I don't know what happened in  
 11 court.  
 12 Q. Sometimes the DA's office will  
 13 dismiss a case because if they don't, it  
 14 will be dismissed 30-30; is that correct?  
 15 MS. GRADY: Objection.  
 16 Privileged.  
 17 MR. ZELMAN: I am not asking about  
 18 this case. In general.  
 19 MS. GRADY: Exactly.  
 20 MR. ZELMAN: Okay.  
 21 Q. Do you know if the District  
 22 Attorney's office ever investigated that  
 23 alibi defense other than just receiving the  
 24 information from defense counsel?  
 25 MS. BROWN: Objection.

1 R. LA TOUR, ESQ.  
 2 A. I can only speak as to what I did.  
 3 Q. You testified earlier you did not,  
 4 right?  
 5 A. I did not what?  
 6 Q. Investigate the alibi?  
 7 A. I did not say that.  
 8 Q. Did you investigate the alibi?  
 9 A. The documents that I testified  
 10 earlier that I received, I received because  
 11 I asked for them.  
 12 Q. Okay.  
 13 A. I also know that I compared some  
 14 of the times and the Defendant's statements  
 15 against Google Maps between the time of the  
 16 address and the address of the hotel that he  
 17 gave me the confirmation for. And based on  
 18 his statement, I believe that he arrived in  
 19 Ocean City around 12:30, 12:50.  
 20 I believed also according to the  
 21 information that is provided by Google Maps  
 22 that if there is no traffic that he could  
 23 have done that and been in Ocean City,  
 24 Maryland at the time that he gave.  
 25 And because I received no

1 R. LA TOUR, ESQ.  
2 dispositive alibi material to discount that,  
3 then it was not helpful to me.  
4 Q. I'm sorry if I misheard you. But  
5 did you say you became aware that there was  
6 a video at some point?  
7 A. That's correct.  
8 Q. And did you ask for that video?  
9 A. I did.  
10 Q. From defense counsel?  
11 A. That's correct.  
12 Q. But never got it?  
13 A. That's correct.  
14 Q. At the time of his arrest and at  
15 the time of his arraignment, you had not  
16 been assigned to this case, correct?  
17 A. That's correct.  
18 Q. During your representation of The  
19 People, did you ever become aware of how  
20 long he was detained before arraignment?  
21 A. I would have been able to look at  
22 the police report to ascertain that.  
23 Q. Did it ever come up as an issue?  
24 A. No.  
25 MS. BROWN: Objection.

1 R. LA TOUR, ESQ.  
2 THE WITNESS: Sorry.  
3 MR. ZELMAN: Can we mark this as  
4 Plaintiff's Exhibit 3, for  
5 identification?  
6 (Whereupon, the aforementioned  
7 photograph was marked as Plaintiff's  
8 Exhibit 3, for identification as of  
9 this date by the reporter.)  
10 Q. I will show you what has been  
11 marked as Plaintiff's Exhibit 3, Def's-35.  
12 Do you recall if that is the photograph that  
13 you testified to earlier that you received?  
14 A. Yes.  
15 Q. So that looks like a photograph of  
16 somebody at a party or something to that  
17 effect?  
18 MS. BROWN: Objection.  
19 A. I don't know.  
20 MS. BROWN: I don't have a copy.  
21 So would I be able to see that please?  
22 Thank you.  
23 MR. ZELMAN: Let us mark this as  
24 well, Defendant's 52, Plaintiff's  
25 Exhibit 4.

1 R. LA TOUR, ESQ.  
2 (Whereupon, the aforementioned  
3 Defendant-52, was marked as Plaintiff's  
4 Exhibit 4, for identification as of  
5 this date by the Reporter.)  
6 Q. Directing your attention to  
7 Plaintiff's Exhibit 4, Defendant-52; do you  
8 recall if that would have been a document  
9 that you viewed when you received the file?  
10 A. I'm taking a moment to look at it.  
11 Q. Sure.  
12 A. Yes.  
13 Q. All right. Just directing your  
14 attention to that little squib on the bottom  
15 of the page. Can you read the last two  
16 sentences?  
17 A. Where it says "detailed summary of  
18 investigation?"  
19 Q. Yes.  
20 A. Starting from "wooden door" or  
21 starting with "conferred?"  
22 Q. Wooden door.  
23 A. "Wooden door from the shed was  
24 non-conductive for fingerprint. And padlock  
25 from the door was taken by the perpetrators.

1 R. LA TOUR, ESQ.  
2 Conferred on the scene with "Detective  
3 Denzinger, D-E-N-Z-I-N-G-E-R, tax number  
4 917500. Babysitter who was in the house at  
5 time of the burglary did take photographs of  
6 the perpetrators."  
7 Q. Did you ever ask for those  
8 photographs?  
9 MS. BROWN: Objection.  
10 A. I asked for photographs taken.  
11 Q. Did you ever have a discussion  
12 with any of the officers, or anyone, or  
13 Ms. Deluca about photographs of the  
14 perpetrators?  
15 A. I don't recall if I specifically  
16 said pictures of the perpetrators.  
17 Q. Do you remember being informed  
18 they were available or not available?  
19 A. I asked for photographs. The  
20 photographs that I received were the  
21 photographs of the truck. I don't recall if  
22 individuals were in those photographs.  
23 Q. Okay. And do you ever remember  
24 specific conversation that -- is this a DD5?  
25 A. It is a DD5.

1 R. LA TOUR, ESQ.  
 2 Q. Did you ever have a conversation  
 3 with anyone if you recall about the fact  
 4 that the DD5 says that the witness took  
 5 photographs of the perpetrators but you did  
 6 not have photographs of the perpetrators?  
 7 MS. BROWN: Objection.  
 8 A. I don't recall specific  
 9 conversations about photographs of the  
 10 perpetrators.  
 11 Q. Okay.  
 12 MR. ZELMAN: I'll take a quick  
 13 break.  
 14 (Whereupon, a short recess was  
 15 taken.)  
 16 MR. ZELMAN: Back on the record.  
 17 Q. A couple of follow-up questions.  
 18 You mentioned that you knew Ms. Curulli  
 19 before this incident, you had prosecuted a  
 20 case against Mr. Curulli, correct?  
 21 A. Yes.  
 22 Q. Have you ever spoken to  
 23 Mr. Curulli?  
 24 A. No.  
 25 Q. In that prior case, how many

1 R. LA TOUR, ESQ.  
 2 contacts did you have with Ms. Curulli; did  
 3 you see her, meet her in person?  
 4 MS. BROWN: Objection.  
 5 A. Yes.  
 6 Q. Did you speak to her on the phone?  
 7 A. Yes.  
 8 Q. You became aware that she was a  
 9 retired officer from the Richmond County for  
 10 the NYPD?  
 11 MS. BROWN: Objection.  
 12 A. To my knowledge, yes.  
 13 Q. The fact that she was a retired --  
 14 was it detective or officer; do you know?  
 15 A. I don't know.  
 16 Q. The fact that she was retired with  
 17 the NYPD, did you handle this witness in any  
 18 other way than you would have any other  
 19 witness?  
 20 MS. BROWN: Objection.  
 21 A. No.  
 22 Q. Did you ever meet Detective  
 23 Danziger in your career?  
 24 A. I believe so.  
 25 Q. Was it before or after this

1 R. LA TOUR, ESQ.  
 2 prosecution of Mr. Tortora?  
 3 A. I don't recall.  
 4 Q. You met him in person?  
 5 A. I believe -- I believe so.  
 6 Q. Do you remember what the context  
 7 was?  
 8 A. No.  
 9 Q. What about Donnelly, Defendant  
 10 Donnelly; did you ever meet him?  
 11 A. Yes.  
 12 Q. Do you remember if it was before  
 13 or after this prosecution of Mr. Tortora?  
 14 A. I believe both.  
 15 Q. What context would you meet him?  
 16 A. Various arrests that he has made.  
 17 Q. Would you typically talk to the  
 18 officers when they made an arrest and ended  
 19 up prosecuting that arrest?  
 20 MS. BROWN: Objection.  
 21 A. I don't know about typically,  
 22 because each case is a such a case by case  
 23 basis. Sometimes I do, sometimes I don't.  
 24 Q. And in this case, you testified  
 25 that you did not speak to Danziger or

1 R. LA TOUR, ESQ.  
 2 Donnelly at all?  
 3 A. I don't believe I did.  
 4 Q. Is there any specific reason that  
 5 you recall that you didn't.  
 6 MS. GRADY: If you can answer.  
 7 Objection to the extent that it calls  
 8 for privilege information.  
 9 MR. ZELMAN: Okay.  
 10 A. At that point in time, I believe I  
 11 had gained what I wanted to know about the  
 12 case from my conversation and my review from  
 13 the paperwork.  
 14 Q. You did not feel the need to speak  
 15 to them; is that correct?  
 16 MS. GRADY: Objection. It calls  
 17 for privilege information.  
 18 Q. My previous question was, did you  
 19 reach out to the officers at all?  
 20 A. I don't believe so.  
 21 Q. Did they reach out to you?  
 22 MS. BROWN: Objection.  
 23 A. Not to my knowledge.  
 24 Q. Okay. Mr. Tortora, did you ever  
 25 meet him before this incident?

1 R. LA TOUR, ESQ.  
 2 A. No.  
 3 Q. You never met him at all actually?  
 4 A. No.  
 5 Q. Was there anything that you  
 6 learned during the course of this  
 7 prosecution that caused you to make the  
 8 decision not to indite or was this just  
 9 information that you had at the outset?  
 10 MS. GRADY: Objection. Calls for  
 11 privilege information.  
 12 MR. ZELMAN: Are you directing her  
 13 not to answer?  
 14 MS. GRADY: Yes.  
 15 Q. Did you receive any information  
 16 about the case other than your conversation  
 17 with Curulli, your conversation with Deluca,  
 18 and your review of the file that you  
 19 received; did you ever receive any  
 20 documentation about Ocean City, Maryland?  
 21 Other than the file that you  
 22 originally received and the paperwork about  
 23 the Ocean City, Maryland receipts that you  
 24 received and mentioned, did you ever receive  
 25 any other documentation or photographs

1 R. LA TOUR, ESQ.  
 2 during your representation of The People in  
 3 the case?  
 4 MS. BROWN: Objection.  
 5 A. No.  
 6 Q. Other than speaking to Curulli and  
 7 Deluca, do you recall speaking to anybody  
 8 else, any other witnesses, or the officers  
 9 regarding this prosecution?  
 10 MS. BROWN: Objection.  
 11 A. No.  
 12 Q. Okay. And you testified  
 13 earlier that your conversations with Curulli  
 14 and Deluca was over the phone, but do you  
 15 remember how many times you spoke to them?  
 16 MS. BROWN: Objection.  
 17 A. I don't recall.  
 18 Q. You don't remember getting any  
 19 other information like let's say with  
 20 respect to the court appearances informed of  
 21 what happened at the court appearances?  
 22 A. I'm informed of what happens in  
 23 court appearances in terms of being  
 24 adjourned.  
 25 Q. Without telling me any content, do

1 R. LA TOUR, ESQ.  
 2 you remember any substantive material that  
 3 you learned at the court conferences other  
 4 than the receipts about Ocean City,  
 5 Maryland?  
 6 MS. BROWN: Objection.  
 7 THE WITNESS: I am sorry.  
 8 A. I don't believe I received a  
 9 receipt as a result of the court conference.  
 10 I believe I received those documents based  
 11 on my conversations with counsel that  
 12 occurred off calendar.  
 13 I don't believe that I received  
 14 any other substantive information from the  
 15 court appearances. May I look at the  
 16 exhibits again?  
 17 Q. (Handing).  
 18 A. And looking at Plaintiff's Exhibit  
 19 1, in the deposition. It looks like I was  
 20 only there prosecuting the case for the one  
 21 adjournment.  
 22 Q. Okay. It was before that  
 23 adjournment that you decided not to indite  
 24 the case, correct?  
 25 A. It would have been after the

1 R. LA TOUR, ESQ.  
 2 arraignment on May 4th. And before the  
 3 court date on June twenty -- I'm sorry --  
 4 before the court date on September 18th.  
 5 I don't know exactly when between  
 6 May 4th and August of 2014, I made that  
 7 decision.  
 8 Q. Okay. With respect to the  
 9 conversation with defense counsel other than  
 10 what you have already testified to, do you  
 11 recall any other information that you  
 12 learned about the case?  
 13 MS. BROWN: Objection. By  
 14 "defense counsel," do you mean criminal  
 15 defense counsel or defense counsel in  
 16 this case?  
 17 MR. ZELMAN: No, criminal defense  
 18 counsel.  
 19 A. No. I believe any substantive  
 20 conversation we had about the case was  
 21 solely about the alibi. And the extent of  
 22 the alibi evidence that I received and that  
 23 I had knowledge of is what I testified to  
 24 earlier.  
 25 Q. How many conversations did you

1 R. LA TOUR, ESQ.  
 2 have with defense counsel about the alibi?  
 3 A. I don't recall how many. I know  
 4 that there were a few.  
 5 MR. ZELMAN: That's okay. I have  
 6 nothing further.  
 7 MS. BROWN: I just have a few  
 8 follow-up questions for you.  
 9 EXAMINATION BY  
 10 MS. BROWN:  
 11 Q. Do you recall testifying about  
 12 brady material in connection with the  
 13 criminal prosecution against Robert Tortora?  
 14 A. Yes.  
 15 Q. And do you recall testifying about  
 16 somehow that brady material had to do with  
 17 the lineup in this case?  
 18 A. I believe that it had to do with  
 19 the identification.  
 20 Q. With the identification? What do  
 21 you mean that the brady material had to do  
 22 with identification?  
 23 A. If I remember correctly, I believe  
 24 it had to do with the disclosure that the  
 25 eyewitness, Ms. Deluca had been shown

1 R. LA TOUR, ESQ.  
 2 photographs previous to the lineup.  
 3 Q. And to the best of your knowledge,  
 4 who showed Ms. Deluca those photographs?  
 5 A. Ms. Curulli.  
 6 Q. And did she show those photographs  
 7 in the presence of any officers; if you  
 8 know?  
 9 A. To my knowledge, no.  
 10 MS. BROWN: No further questions.  
 11 MR. ZELMAN: To clarify.  
 12 CONTINUED EXAMINATION BY  
 13 MR. ZELMAN:  
 14 Q. Earlier you testified that you did  
 15 not believe the officers were there when the  
 16 photograph was shown to Ms. Deluca, correct?  
 17 A. I need you to specify what  
 18 photograph you are talking about. We have  
 19 spoken about a few photographs in the case.  
 20 Q. Just to clarify.  
 21 A. Yes.  
 22 Q. Earlier in the deposition, we were  
 23 having discussions about the fact that  
 24 Ms. Curulli showed the photographs to  
 25 Ms. Deluca before officers arrived.

1 R. LA TOUR, ESQ.  
 2 A. Yes.  
 3 Q. It is still your understanding  
 4 that that is what happened; is that right?  
 5 MS. BROWN: Objection.  
 6 THE WITNESS: Sorry.  
 7 A. My understanding is prior to  
 8 Ms. Curulli even calling the police, she  
 9 showed these photographs.  
 10 Q. And then the police were called  
 11 apparently after Ms. Deluca said to  
 12 Ms. Curulli that she thinks she can identify  
 13 somebody?  
 14 MS. BROWN: Objection.  
 15 A. That is my understanding.  
 16 Q. Now, did you ever learn that the  
 17 officers did an actual photographic lineup?  
 18 MS. BROWN: Objection.  
 19 A. I don't know what you mean by  
 20 photographic lineup.  
 21 Q. Meaning officers are able to do a  
 22 photo-array at the scene of a crime?  
 23 A. So a photo-array is different than  
 24 a lineup?  
 25 Q. Sure. A lineup is in-person.

1 R. LA TOUR, ESQ.  
 2 A. Yes.  
 3 Q. A photo-array is a photo-array?  
 4 A. Yes. Usually comprised of six  
 5 people, yes.  
 6 Q. So as far as you know, you would  
 7 not know the parameters of these pictures  
 8 that were shown to Ms. Deluca, if it was one  
 9 by one or something else, correct?  
 10 MS. BROWN: Objection. What  
 11 pictures are you talking about?  
 12 MR. ZELMAN: Curulli showed  
 13 pictures to Deluca before the officers  
 14 came.  
 15 A. My understanding is that she  
 16 showed her pictures from a wedding album.  
 17 Q. Okay.  
 18 A. And after Ms. Deluca gave her a  
 19 description of who she saw.  
 20 Q. Okay.  
 21 A. So my understanding is that  
 22 Ms. Deluca first described the individuals  
 23 to Ms. Curulli. And Ms. Curulli then took  
 24 out her wedding album, showed her  
 25 individuals she thought fit the description.

1 R. LA TOUR, ESQ.  
 2 And Ms. Deluca identified Mr. Tortora. And  
 3 after that she called the police. That is  
 4 my understanding based on my conversations.  
 5 Q. Did you ever get a copy of these  
 6 wedding photographs?  
 7 A. No.  
 8 Q. Did you ever ask for them?  
 9 A. No.  
 10 Q. There were no officers present  
 11 when Ms. Curulli was asking Ms. Deluca these  
 12 questions?  
 13 A. Not to my understanding. That  
 14 this happened before police were even  
 15 notified about the incident.  
 16 Q. When the police were notified, do  
 17 you know if Ms. Curulli called in and said  
 18 "we have identified somebody" or something  
 19 else?  
 20 A. I don't recall.  
 21 MS. BROWN: Objection.  
 22 A. I don't recall.  
 23 Q. Do you know if the officers  
 24 brought a photo-array to the scene to have  
 25 Ms. Deluca view?

1 R. LA TOUR, ESQ.  
 2 A. I don't know if that happened.  
 3 Q. That would be brady material, why?  
 4 MS. BROWN: Objection. What would  
 5 be brady material? Why what?  
 6 Q. Your testimony now is that it was  
 7 the photo-array that was done for lack of a  
 8 better phrase that was done by Ms. Curulli  
 9 that was the substance of the brady,  
 10 correct?  
 11 A. No.  
 12 MS. BROWN: Objection to the fact  
 13 that you are characterizing that as a  
 14 photo-array. But go ahead.  
 15 THE WITNESS: That is what I was  
 16 going to say.  
 17 A. I was going to say that a  
 18 photo-array refers to an actual official  
 19 police procedure where they normally --  
 20 right -- they go through a certain procedure  
 21 to generate photographs of an individual  
 22 that looks similar to the target individual.  
 23 They place them randomly, right, out of six,  
 24 and they ask somebody if that person is  
 25 present in the photo-array.

1 R. LA TOUR, ESQ.  
 2 That is not what Ms. Curulli did  
 3 to my understanding. My understanding is,  
 4 Ms. Curulli opened a photograph, a photo  
 5 album, showed her some people in the photo  
 6 album. And asked if Ms. Deluca recognized  
 7 anybody. Or -- I mean, I don't know exactly  
 8 how she showed her the photo album, but I  
 9 would not characterize that as a  
 10 photo-array.  
 11 Q. Why was that brady?  
 12 A. I am not the one who wrote down  
 13 that that was the brady that should be  
 14 revealed to defense counsel.  
 15 Q. So as you sit here today, are you  
 16 confident that, what we are discussing now,  
 17 that Ms. Curulli showed photograph to  
 18 Ms. Deluca before officers came is the brady  
 19 material that is referenced in the file or  
 20 you are not sure?  
 21 MS. GRADY: Objection.  
 22 MS. BROWN: Off the record.  
 23 (Whereupon, an off-the-record  
 24 discussion was held.)  
 25 MR. ZELMAN: Back on the record.

1 R. LA TOUR, ESQ.  
 2 MS. GRADY: Objection.  
 3 Privileged.  
 4 MR. ZELMAN: Can you read back the  
 5 question.  
 6 (Whereupon, the referred-to  
 7 question and was read back by the  
 8 reporter.)  
 9 MS. GRADY: That is privileged  
 10 information.  
 11 Q. You indicated that there is brady  
 12 material that was put on the record,  
 13 correct?  
 14 A. Yes.  
 15 MS. BROWN: Objection.  
 16 Q. What Defense Counsel asked you  
 17 about a minute ago -- you said that when you  
 18 testified earlier, you said that you thought  
 19 brady material had to do with the lineup,  
 20 correct?  
 21 A. That's correct.  
 22 Q. When Defense Counsel asked you  
 23 about it, you said you think the brady  
 24 material had to do with the photographs  
 25 being shown by Ms. Curulli?

<p>61</p> <p>1 R. LA TOUR, ESQ.  2 MS. BROWN: Objection.  3 Q. That's correct. I don't know if  4 she asked me about brady material. I  5 believe what Ms. Brown, if I am remembering  6 correctly just asked me about the pictures.  7 I don't know that she asked me about  8 anything in relation to whether or not that  9 was brady material.  10 Q. All right. As you sit here today,  11 with respect to the brady material as noted  12 in the file and it says it was put on the  13 record?  14 A. Yes.  15 Q. Do you know what that is referring  16 to?  17 A. Well, I testified before that I  18 believe it had to do with the identification  19 procedure.  20 Q. Do you specifically know if it had  21 to go with the lineup or the photographs  22 shown to Ms. Deluca?  23 MS. GRADY: Do you know what is  24 the question?  25 A. I believe that it had to do with</p>	<p>63</p> <p>1 R. LA TOUR, ESQ.  2 MS. BROWN: No further questions.  3 MR. ZELMAN: Nothing further.  4 Thank you.  5 MS. GRADY: Thank you.  6 (Whereupon, at 12:18 P.M., the  7 Examination of this witness was  8 concluded.)  9  10 ° ° ° °  11  12  13  14  15  16  17  18  19  20  21  22  23  24  25</p>
<p>62</p> <p>1 R. LA TOUR, ESQ.  2 the fact that she was -- that Ms. Deluca was  3 shown photographs of individuals by  4 Ms. Curulli before she did the lineup  5 identification procedure.  6 Q. Okay. And you indicated  7 earlier it was not your decision to make  8 that brady?  9 A. That's correct.  10 MR. ZELMAN: Okay, understood. I  11 have nothing further.  12 CONTINUED EXAMINATION BY  13 MS. BROWN:  14 Q. What is your understanding of what  15 brady material is?  16 A. My understanding of brady material  17 is that it is exculpatory information. That  18 is my strict sense of brady material. Now,  19 that if you are asking for my understanding  20 of brady, sometimes I am broader in terms of  21 what I turn over. Even if it is not  22 technically brady material I might turn it  23 over anyway, because I believe it is best  24 practice to do so. Even though technically  25 it may not be or would not be.</p>	<p>64</p> <p>1 R. LA TOUR, ESQ.  2 DECLARATION  3  4 I hereby certify that having been first  5 duly sworn to testify to the truth, I gave  6 the above testimony.  7  8 I FURTHER CERTIFY that the foregoing  9 transcript is a true and correct transcript  10 of the testimony given by me at the time and  11 place specified hereinbefore.  12  13  14  15  16  17  18  19  20  21  22  23  24  25</p> <p style="text-align: center;">_____  RHIANNON LA TOUR, ESQ.</p> <p>Subscribed and sworn to before me  this ____ day of _____ 20____.</p> <p style="text-align: center;">_____  NOTARY PUBLIC</p>



1	R. LA TOUR, ESQ.	
2	E X H I B I T S	
3		
4	PLAINTIFF'S EXHIBITS:	
5		
6	EXHIBIT EXHIBIT	
7	NUMBER DESCRIPTION PAGE	
8	1 City's Def-73/Bucksheet	20
9	2 City's Def-71	34
10	3 City's Def-35/Photograph	42
11	4 City's Def-52	43
12		
13	(Exhibits retained by Counsel.)	
14		
15	I N D E X	
16		
17	EXAMINATION BY PAGE	
18	MR. ZELMAN	4, 54
19	MS. BROWN	53, 62
20		
21		
22	INFORMATION AND/OR DOCUMENTS REQUESTED	
23	INFORMATION AND/OR DOCUMENTS PAGE	
24	(None)	
25		

1 R. LA TOUR, ESQ.  
2 C E R T I F I C A T E  
3  
4 STATE OF NEW YORK )  
: SS.:  
5 COUNTY OF KINGS )  
6  
7 I, GERMILA DONALD, a Notary Public for  
8 and within the State of New York, do hereby  
9 certify:  
10 That the witness whose examination is  
11 hereinbefore set forth was duly sworn and  
12 that such examination is a true record of  
13 the testimony given by that witness.  
14 I further certify that I am not related  
15 to any of the parties to this action by  
16 blood or by marriage and that I am in no way  
17 interested in the outcome of this matter.  
18 IN WITNESS WHEREOF, I have hereunto set  
19 my hand this 30th day of November 2017.  
20  
21  
22  
23  
24  
25

\_\_\_\_\_  
GERMILA DONALD

A				
<b>able (8)</b> 25:2,8 26:11 28:14 37:24 41:21 42:21 55:21 <b>account (1)</b> 28:11 <b>accurate (1)</b> 35:13 <b>action (1)</b> 66:15 <b>actual (2)</b> 55:17 58:18 <b>ADA (4)</b> 4:23 12:8 17:11 30:25 <b>address (2)</b> 40:16,16 <b>adjourned (1)</b> 50:24 <b>adjournment (2)</b> 51:21,23 <b>administer (1)</b> 3:10 <b>aforementioned (4)</b> 20:9 34:11 42:6 43:2 <b>ago (1)</b> 60:17 <b>AGREED (2)</b> 3:4,19 <b>ahead (6)</b> 6:23 12:24 16:6 23:17 27:3 58:14 <b>album (7)</b> 25:16,23 56:16,24 59:5,6,8 <b>alibi (10)</b> 15:24 31:16,20 39:23 40:6,8 41:2 52:21 52:22 53:2 <b>alleged (1)</b> 26:24 <b>allegedly (1)</b> 33:8 <b>allow (1)</b>	11:7 <b>AND/OR (2)</b> 65:22,23 <b>ANNE (1)</b> 2:21 <b>anne.grady@rcda....</b> 2:21 <b>answer (13)</b> 8:14 9:20,21,22 11:3 11:4,5 12:11,23 16:7 27:11 48:6 49:13 <b>anybody (8)</b> 12:6 16:5 18:9 24:23 25:8 37:16 50:7 59:7 <b>anyway (1)</b> 62:23 <b>apparently (2)</b> 32:20 55:11 <b>APPEALS (1)</b> 2:18 <b>appear (1)</b> 14:8 <b>appearance (1)</b> 17:7 <b>appearances (6)</b> 17:6 18:18 50:20,21 50:23 51:15 <b>approximately (1)</b> 12:2 <b>April (1)</b> 5:19 <b>arraignment (6)</b> 11:16,19,22 41:15,20 52:2 <b>arrest (8)</b> 19:2,4 36:9,12,19 41:14 47:18,19 <b>arrested (1)</b> 13:15 <b>arrests (1)</b> 47:16 <b>arrived (2)</b> 40:18 54:25 <b>ascertain (2)</b>	28:14 41:22 <b>asked (15)</b> 15:20 25:9 29:16,22 30:5 38:16 40:11 44:10,19 59:6 60:16,22 61:4,6,7 <b>asking (4)</b> 37:21 39:17 57:11 62:19 <b>assault (3)</b> 6:19 8:4,18 <b>assign (3)</b> 7:16,19 10:6 <b>assigned (15)</b> 4:23 5:12,14 6:9,21 6:24 7:5,14 8:24 10:3,4,8,12 36:22 41:16 <b>assistant (6)</b> 2:18 5:20 6:2,7,13 11:15 <b>attempt (1)</b> 28:20 <b>attended (2)</b> 17:6,7 <b>attention (3)</b> 34:19 43:6,14 <b>attorney (8)</b> 2:17,18 4:12,20 11:15 17:3,13 31:23 <b>Attorneys (3)</b> 2:4,10,19 <b>Attorney's (6)</b> 7:19 11:14 12:6 37:9 38:6 39:22 <b>August (5)</b> 9:11 18:24 19:8,13 52:6 <b>authorized (1)</b> 3:10 <b>available (3)</b> 15:8 44:18,18 <b>aware (15)</b> 15:24 16:10 17:9 18:2 30:16 31:10	33:23 38:4,16,19,21 38:24 41:5,19 46:8 <b>A.M (1)</b> 1:13 <th data-bbox="1213 428 1524 464">B</th> <b>B (1)</b> 65:2 <b>babysitter (5)</b> 13:6,7 23:8,10 44:4 <b>back (7)</b> 4:24 8:11 20:18 45:16 59:25 60:4,7 <b>based (5)</b> 21:9 39:3 40:17 51:10 57:4 <b>basically (2)</b> 23:9 24:14 <b>basis (1)</b> 47:23 <b>Bates (3)</b> 34:12,16,19 <b>bed (1)</b> 33:6 <b>beginning (1)</b> 36:25 <b>believe (50)</b> 4:25 5:25 7:9 11:12 13:22 14:12,16,19 14:22 15:5,18,21 18:5,8,12 19:3,5 21:24 22:16,19 23:21,23 24:17 25:16 26:8,16 27:21,25 29:2 32:2 32:18 40:18 46:24 47:5,5,14 48:3,10 48:20 51:8,10,13 52:19 53:18,23 54:15 61:5,18,25 62:23 <b>believed (1)</b> 40:20 <b>belonged (4)</b> 29:20,25 33:15,18 <b>best (5)</b>	B

18:17 25:21 31:9 54:3 62:23 <b>better (1)</b> 58:8 <b>beyond (3)</b> 35:10 37:11,24 <b>bit (1)</b> 20:24 <b>black (1)</b> 33:6 <b>blood (1)</b> 66:16 <b>boat (3)</b> 30:13,14 33:10 <b>booking (1)</b> 32:15 <b>bottom (2)</b> 35:6 43:14 <b>brady (25)</b> 21:5,11,11,20 53:12 53:16,21 58:3,5,9 59:11,13,18 60:11 60:19,23 61:4,9,11 62:8,15,16,18,20,22 <b>BRD (1)</b> 35:8 <b>break (2)</b> 20:15 45:13 <b>broader (1)</b> 62:20 <b>broke (1)</b> 13:10 <b>broken (3)</b> 28:8,11,12 <b>Brooklyn (1)</b> 1:22 <b>brought (1)</b> 57:24 <b>Brown (59)</b> 2:14 6:23 7:23 8:8,15 9:18 12:22 15:4,9 16:19 17:2 18:4,14 20:6 22:4 23:17 27:3 28:16 29:7 32:24 33:16,25 34:16 37:4,13 39:8	39:25 41:25 42:18 42:20 44:9 45:7 46:4,11,20 47:20 48:22 50:4,10,16 51:6 52:13 53:7,10 54:10 55:5,14,18 56:10 57:21 58:4 58:12 59:22 60:15 61:2,5 62:13 63:2 65:19 <b>Bureau (3)</b> 2:18 5:21 6:14 <b>burglary (1)</b> 44:5 <b>business (1)</b> 4:11 <b>B-R-D (1)</b> 35:9 <hr/> <b>C</b> <hr/> <b>C (4)</b> 2:2 64:2 66:2,2 <b>calendar (2)</b> 5:16 51:12 <b>call (3)</b> 24:6,6 30:17 <b>called (7)</b> 4:2,24 24:8,9 55:10 57:3,17 <b>calling (1)</b> 55:8 <b>calls (4)</b> 37:17 48:7,16 49:10 <b>career (1)</b> 46:23 <b>CARTER (1)</b> 2:9 <b>case (84)</b> 1:5 4:21,24 6:13,15 6:21,24 7:5,13,20 7:22 8:2,4,4,16,18 8:20,24,25 9:4,7,14 12:7,9,21 13:4,17 17:22 18:10,11,19 19:6,10,12,16,20 22:15 27:2 29:2,4	30:2,17,20 31:5,22 32:22 34:4,21 35:20,22,23,24,25 36:2,4,6,21,22,25 37:10,24 38:8 39:2 39:5,6,13,18 41:16 45:20,25 47:22,22 47:22,24 48:12 49:16 50:3 51:20 51:24 52:12,16,20 53:17 54:19 <b>cases (6)</b> 6:8,8,10,18,19 10:6 <b>category (2)</b> 6:16,17 <b>caused (1)</b> 49:7 <b>certain (1)</b> 58:20 <b>certification (1)</b> 3:7 <b>certify (4)</b> 64:4,8 66:9,14 <b>cetera (1)</b> 26:12 <b>characterize (1)</b> 59:9 <b>characterizing (1)</b> 58:13 <b>charge (1)</b> 36:16 <b>charges (1)</b> 36:7 <b>CHEBROWN@L...</b> 2:15 <b>CHERIE (1)</b> 2:14 <b>CHIEF (1)</b> 2:18 <b>children (1)</b> 6:19 <b>Church (1)</b> 2:13 <b>City (15)</b> 1:7,16 2:10,11 16:12 16:24,25 17:15,16	17:24 40:19,23 49:20,23 51:4 <b>City's (5)</b> 20:10 65:8,9,10,11 <b>Civil (1)</b> 1:19 <b>claimed (1)</b> 31:10 <b>claiming (1)</b> 16:18 <b>clarification (1)</b> 9:19 <b>clarify (2)</b> 54:11,20 <b>client (1)</b> 7:21 <b>collect (1)</b> 28:12 <b>come (2)</b> 14:17 41:23 <b>comes (1)</b> 7:13 <b>compared (1)</b> 40:13 <b>Complaint (1)</b> 11:14 <b>comprised (1)</b> 56:4 <b>concluded (1)</b> 63:8 <b>conference (1)</b> 51:9 <b>conferences (1)</b> 51:3 <b>conferred (2)</b> 43:21 44:2 <b>confident (1)</b> 59:16 <b>confirmation (4)</b> 32:2,13,15 40:17 <b>confirmed (1)</b> 27:19 <b>connection (1)</b> 53:12 <b>contact (3)</b> 18:13,16 28:21
---	---	---	--

<b>contacts (1)</b> 46:2	41:10 51:11 52:9 52:14,15,15,18 53:2 59:14 60:16,22 65:13	46:23 47:25	<b>Def-35/Photograp...</b> 65:10
<b>contained (1)</b> 9:23	<b>County (5)</b> 2:17 4:13 5:8 46:9 66:5	<b>data (3)</b> 11:14 31:2 32:21	<b>Def-52 (1)</b> 65:11
<b>contemporaneous ...</b> 24:10	<b>couple (1)</b> 45:17	<b>date (7)</b> 1:12 20:12 34:14 42:9 43:5 52:3,4	<b>Def-71 (2)</b> 34:12 65:9
<b>content (1)</b> 50:25	<b>course (1)</b> 49:6	<b>David (2)</b> 2:6 4:20	<b>Def-73/buck (1)</b> 20:10
<b>content-specific (1)</b> 37:22	<b>court (19)</b> 1:2,18,21 3:12 17:8 20:7 21:10 33:21 34:20,22 39:11 50:20,21,23 51:3,9 51:15 52:3,4	<b>day (7)</b> 10:17,20 11:22,24 12:4 64:19 66:19	<b>Def-73/Bucksheet ...</b> 65:8
<b>context (2)</b> 47:6,15	<b>crime (2)</b> 23:15 55:22	<b>days (3)</b> 3:15 9:4 36:9	<b>Deluca (21)</b> 26:8 44:13 49:17 50:7,14 53:25 54:4 54:16,25 55:11 56:8,13,18,22 57:2 57:11,25 59:6,18 61:22 62:2
<b>CONTINUED (2)</b> 54:12 62:12	<b>criminal (3)</b> 52:14,17 53:13	<b>day-to-day (1)</b> 6:7	<b>Deluca's (1)</b> 26:24
<b>controlled (1)</b> 30:17	<b>Curulli (42)</b> 7:2,6,6,11 13:6 15:19 22:14 24:16 25:22 26:9 28:18,21 29:8 29:16,19,20,22 30:2 30:17 33:14 45:18 45:20,23 46:2 49:17 50:6,13 54:5 54:24 55:8,12 56:12,23,23 57:11 57:17 58:8 59:2,4 59:17 60:25 62:4	<b>DA's (4)</b> 5:8 35:12,20 39:12	<b>Denzinger (1)</b> 44:3
<b>conversation (13)</b> 17:13 18:6 37:23 38:15,20,22 44:24 45:2 48:12 49:16 49:17 52:9,20	<b>curuli's (6)</b> 13:5,9 14:3 28:15,19 29:9	<b>DD5 (3)</b> 44:24,25 45:4	<b>DEPARTMENT (1)</b> 2:10
<b>conversations (9)</b> 12:8,13,15,17 45:9 50:13 51:11 52:25 57:4	<b>custom (1)</b> 7:18	<b>decided (3)</b> 36:20 37:9 51:23	<b>deposition (7)</b> 1:15 3:7,8,13 10:23 51:19 54:22
<b>copies (1)</b> 31:23	<b>D</b>	<b>deciding (1)</b> 38:25	<b>DEPUTY (1)</b> 2:18
<b>copy (5)</b> 3:13,16 31:25 42:20 57:5	<b>D (3)</b> 3:2 64:2 65:15	<b>decision (14)</b> 19:16,18,22,24 35:11 35:14,19 36:8,13,17 37:16 49:8 52:7 62:7	<b>described (1)</b> 56:22
<b>CORPORATION ...</b> 2:9	<b>DA (2)</b> 34:25 39:7	<b>Defendant (7)</b> 1:15 2:19 21:13 28:25 31:4 34:18 47:9	<b>description (5)</b> 25:14 27:24 56:19,25 65:7
<b>correct (26)</b> 11:20 29:10,21 31:17 35:20 36:2 37:11 39:7,14 41:7,11,13 41:16,17 45:20 48:15 51:24 54:16 56:9 58:10 60:13 60:20,21 61:3 62:9 64:9	<b>Danziger (7)</b> 1:8 2:11 17:23 18:3,7	<b>Defendants (2)</b> 1:9 2:10	<b>detailed (1)</b> 43:17
<b>correctly (2)</b> 53:23 61:6		<b>Defendant's (4)</b> 20:4,20 40:14 42:24	<b>detained (1)</b> 41:20
<b>counsel (20)</b> 2:6,9 3:5,16 17:10 28:25 32:5 39:24		<b>Defendant-52 (2)</b> 43:3,7	<b>detective (7)</b> 1:7 2:11 17:22 31:6 44:2 46:14,22
		<b>defense (18)</b> 17:3,10,13 31:16,22 32:5 39:23,24 41:10 52:9,14,15,15 52:17 53:2 59:14 60:16,22	<b>detective's (1)</b> 27:20
		<b>Def's-35 (1)</b> 42:11	<b>Diamond (1)</b> 1:20
			<b>difference (1)</b> 36:3

<b>different (2)</b> 5:11 55:23	11:11 13:2 40:9 51:10 65:22,23	<b>entire (1)</b> 5:16	<b>exhibit (15)</b> 20:4,8,8,11 34:9,13 42:4,8,11,25 43:4,7 51:18 65:6,6
<b>direct (2)</b> 9:21,22	<b>DOE(S) (2)</b> 1:8 2:12	<b>Esq (71)</b> 1:17 2:6,9,14,19,21 4:1,10 5:1 6:1 7:1 8:1 9:1 10:1 11:1 12:1 13:1 14:1 15:1 16:1 17:1 18:1 19:1 20:1 21:1 22:1 23:1 24:1 25:1 26:1 27:1 28:1 29:1 30:1 31:1 32:1 33:1 34:1 35:1 36:1 37:1 38:1 39:1 40:1 41:1 42:1 43:1 44:1 45:1 46:1 47:1 48:1 49:1 50:1 51:1 52:1 53:1 54:1 55:1 56:1 57:1 58:1 59:1 60:1 61:1 62:1 63:1 64:1,15 65:1 66:1	<b>exhibits (3)</b> 51:16 65:4,13
<b>directing (4)</b> 34:19 43:6,13 49:12	<b>domestic (2)</b> 6:17,22		<b>extent (3)</b> 32:2 48:7 52:21
<b>disagree (1)</b> 38:3	<b>Donald (3)</b> 1:23 66:7,22		<b>eyewitness (5)</b> 13:24 14:23 23:2,20 53:25
<b>disclosure (1)</b> 53:24	<b>Donnelly (6)</b> 1:8 2:12 31:5 47:9,10 48:2		
<b>discount (1)</b> 41:2	<b>door (4)</b> 43:20,22,23,25		<b>F</b>
<b>Discovery (1)</b> 11:8	<b>doubt (3)</b> 35:10 37:11,25		<b>F (2)</b> 3:2 66:2
<b>discuss (1)</b> 32:4	<b>drafted (1)</b> 11:15		<b>faces (2)</b> 25:2,5
<b>discussing (1)</b> 59:16	<b>driving (2)</b> 28:3 31:11		<b>fact (6)</b> 45:3 46:13,16 54:23 58:12 62:2
<b>discussion (3)</b> 32:8 44:11 59:24	<b>drove (1)</b> 24:21	<b>et (1)</b> 26:11	<b>falling (1)</b> 6:15
<b>discussions (6)</b> 10:10 33:2,4 37:15 37:20 54:23	<b>duly (3)</b> 4:3 64:5 66:11	<b>event (1)</b> 15:23	<b>far (2)</b> 34:5 56:6
<b>dismiss (6)</b> 35:20 36:6 37:10 38:5,24 39:13	<b>D-E-N-Z-I-N-G-E-...</b> 44:3	<b>eventual (1)</b> 39:3	<b>February (2)</b> 5:9 9:13
<b>dismissal (2)</b> 35:17 39:3	<b>E</b>	<b>eventually (1)</b> 34:6	<b>federal (2)</b> 1:19 4:21
<b>dismissed (10)</b> 19:10 34:6 35:6 36:7 38:8,10,11 39:6,6 39:14	<b>E (10)</b> 2:2,2 3:2,2 4:2 64:2 65:2,15 66:2,2	<b>evidence (5)</b> 15:25 26:25 27:5,12 52:22	<b>feel (1)</b> 48:14
<b>dismissing (2)</b> 35:24 36:2	<b>earlier (9)</b> 40:3,10 42:13 50:13 52:24 54:14,22 60:18 62:7	<b>ex (2)</b> 33:15,18	<b>felonies (2)</b> 6:16,18
<b>dispositive (1)</b> 41:2	<b>Eastern (2)</b> 1:2 4:22	<b>exact (3)</b> 11:24 15:17 23:6	<b>felony (2)</b> 36:16 39:2
<b>District (13)</b> 1:2,2 2:17,18 4:12,22 7:18 11:13,15 12:6 37:9 38:6 39:21	<b>effect (3)</b> 3:11,14 42:17	<b>exactly (5)</b> 9:5 36:21 39:19 52:5 59:7	<b>file (26)</b> 9:23 10:16,20 11:10 11:11,18,22 12:20 13:19 14:15,18,21 15:12,25 17:15 21:10 24:10,15 34:20,22,25 43:9 49:18,21 59:19 61:12
<b>document (5)</b> 12:25 20:21 34:12 37:7 43:8	<b>eight (1)</b> 36:9	<b>examination (8)</b> 4:6 53:9 54:12 62:12 63:7 65:17 66:10 66:12	<b>filing (1)</b> 3:6
<b>documentation (2)</b> 49:20,25	<b>Either (1)</b> 35:16	<b>examined (1)</b> 4:5	<b>find (3)</b>
<b>documents (6)</b>	<b>employed (1)</b> 18:10	<b>exculpatory (2)</b> 21:12 62:17	
	<b>ended (1)</b> 47:18		

32:9,14 38:9 <b>fingerprint (1)</b> 43:24 <b>first (7)</b> 4:3,15 9:15,24 37:6 56:22 64:4 <b>fit (1)</b> 56:25 <b>follows (1)</b> 4:5 <b>follow-up (2)</b> 45:17 53:8 <b>force (1)</b> 3:14 <b>foregoing (1)</b> 64:8 <b>form (1)</b> 3:20 <b>forth (1)</b> 66:11 <b>found (1)</b> 38:7 <b>frame (1)</b> 18:25 <b>friend (1)</b> 30:6 <b>front (1)</b> 37:7 <b>functions (1)</b> 5:11 <b>further (8)</b> 3:19 53:6 54:10 62:11 63:2,3 64:8 66:14	<b>generate (1)</b> 58:21 <b>Germila (3)</b> 1:22 66:7,22 <b>getting (1)</b> 50:18 <b>give (1)</b> 13:3 <b>given (4)</b> 11:16 15:13 64:10 66:13 <b>go (9)</b> 6:23 8:22 12:24 16:6 23:17 27:3 58:14 58:20 61:21 <b>going (4)</b> 19:20 35:22 58:16,17 <b>Good (3)</b> 4:15,17,19 <b>Google (2)</b> 40:15,21 <b>gotten (1)</b> 24:19 <b>GRADY (29)</b> 2:21 7:24 8:6 10:15 11:2 12:10,14,24 16:3,6,8 21:15,22 34:18 37:17,21 38:12,18 39:15,19 48:6,16 49:10,14 59:21 60:2,9 61:23 63:5 <b>Grand (1)</b> 36:5 <b>grange (1)</b> 21:3 <b>guess (1)</b> 13:17	<b>handle (3)</b> 6:8 19:6 46:17 <b>handled (2)</b> 12:8 19:12 <b>handwriting (4)</b> 20:23,24 21:2 35:3 <b>happened (7)</b> 11:19 35:17 39:10 50:21 55:4 57:14 58:2 <b>happens (1)</b> 50:22 <b>hard (1)</b> 27:10 <b>health (1)</b> 33:24 <b>held (2)</b> 1:20 59:24 <b>helpful (3)</b> 32:10,14 41:3 <b>hereinbefore (2)</b> 64:11 66:11 <b>hereunto (1)</b> 66:18 <b>home (2)</b> 13:6,7 <b>hotel (2)</b> 31:25 40:16 <b>house (5)</b> 14:8 15:21 23:8 24:15 44:4	45:19 48:25 57:15 <b>include (1)</b> 6:17 <b>inculpatory (1)</b> 27:8 <b>indicated (2)</b> 60:11 62:6 <b>indicates (2)</b> 37:8,12 <b>indite (10)</b> 19:20 35:22 36:4,8 36:13,18,20 38:25 49:8 51:23 <b>inditing (2)</b> 35:23,25 <b>individual (2)</b> 58:21,22 <b>individuals (5)</b> 13:10 44:22 56:22,25 62:3 <b>information (25)</b> 9:16 16:17,21,23 21:12 26:11 28:17 31:15,19 32:3 37:18 39:24 40:21 48:8,17 49:9,11,15 50:19 51:14 52:11 60:10 62:17 65:22 65:23 <b>informed (5)</b> 4:23 14:13 44:17 50:20,22 <b>inside (2)</b> 21:6,10 <b>instructed (1)</b> 11:4 <b>interested (1)</b> 66:17 <b>investigate (2)</b> 40:6,8 <b>investigated (1)</b> 39:22 <b>investigating (1)</b> 17:23 <b>investigation (4)</b> 26:14,18 32:23 43:18
<hr/> <b>G</b> <hr/>	<hr/> <b>H</b> <hr/>	<hr/> <b>I</b> <hr/>	
<b>gain (1)</b> 26:11 <b>gained (1)</b> 48:11 <b>garage (2)</b> 13:8,9 <b>gas (3)</b> 31:24 32:10,12 <b>general (2)</b> 11:3 39:18	<b>Handing (1)</b> 51:17	<b>identified (4)</b> 13:14 14:2 57:2,18 <b>identify (2)</b> 25:8 55:12 <b>incident (12)</b> 14:6 15:2 16:12 17:17,25 22:25 26:6 30:18 31:13	

<b>involved (2)</b> 6:3 32:22 <b>involvement (4)</b> 6:25 7:4 9:3 10:12 <b>in-person (1)</b> 55:25 <b>Island (3)</b> 2:20 4:14 15:23 <b>issue (2)</b> 11:6 41:23 <b>issues (1)</b> 33:24 <b>items (2)</b> 13:11 33:11	47:21 48:11 52:5 53:3 54:8 55:19 56:6,7 57:17,23 58:2 59:7 61:3,7,15 61:20,23 <b>knowledge (8)</b> 25:21 28:7 31:9 46:12 48:23 52:23 54:3,9	9:8,9,10 18:23 35:13 <b>left (6)</b> 9:10 19:10,11 35:12 35:18 36:23 <b>let's (1)</b> 50:19 <b>line (5)</b> 5:20 6:2,6,13 13:14 <b>lineup (13)</b> 22:3,5,7 25:20 53:17 54:2 55:17,20,24,25 60:19 61:21 62:4 <b>listed (1)</b> 21:11 <b>little (3)</b> 20:24 21:2 43:14 <b>LLP (1)</b> 2:4 <b>located (2)</b> 13:8 14:2 <b>location (1)</b> 22:18 <b>lock (4)</b> 13:11 28:8,11,12 <b>long (8)</b> 5:7,22 9:5 11:21 12:2 30:23 36:12 41:20 <b>look (3)</b> 41:21 43:10 51:15 <b>looking (2)</b> 14:10 51:18 <b>looks (3)</b> 42:15 51:19 58:22	5:25 <b>mark (2)</b> 42:3,23 <b>marked (9)</b> 20:4,7,10,20 34:8,12 42:7,11 43:3 <b>marriage (1)</b> 66:16 <b>Maryland (10)</b> 16:12,24,25 17:15,16 17:25 40:24 49:20 49:23 51:5 <b>material (20)</b> 21:11,21 41:2 51:2 53:12,16,21 58:3,5 59:19 60:12,19,24 61:4,9,11 62:15,16 62:18,22 <b>matter (1)</b> 66:17 <b>mean (9)</b> 6:9 22:3 26:5 27:7 32:16 52:14 53:21 55:19 59:7 <b>Meaning (1)</b> 55:21 <b>meet (6)</b> 33:19 46:3,22 47:10 47:15 48:25 <b>mentioned (3)</b> 32:18 45:18 49:24 <b>met (3)</b> 7:10 47:4 49:3 <b>middle (2)</b> 9:7 37:2 <b>minute (1)</b> 60:17 <b>misdemeanors (1)</b> 6:16 <b>misheard (1)</b> 41:4 <b>MKB (1)</b> 1:6 <b>moment (1)</b> 43:10 <b>month (3)</b>
<hr/> <p style="text-align: center;"><b>J</b></p> <hr/> <b>JOHN/JANE (2)</b> 1:8 2:12 <b>judge (3)</b> 3:12 31:12 36:7 <b>Judges (1)</b> 11:7 <b>June (1)</b> 52:3 <b>Jury (1)</b> 36:5	<hr/> <p style="text-align: center;"><b>L</b></p> <hr/> <b>L (4)</b> 3:2,2 4:2 64:2 <b>La (68)</b> 1:17 2:19 4:1,10,15 5:1 6:1 7:1 8:1 9:1 10:1 11:1 12:1 13:1 14:1 15:1 16:1 17:1 18:1 19:1 20:1 21:1 22:1 23:1 24:1 25:1 26:1 27:1 28:1 29:1 30:1 31:1 32:1 33:1 34:1 35:1 36:1 37:1 38:1 39:1 40:1 41:1 42:1 43:1 44:1 45:1 46:1 47:1 48:1 49:1 50:1 51:1 52:1 53:1 54:1 55:1 56:1 57:1 58:1 59:1 60:1 61:1 62:1 63:1 64:1,15 65:1 66:1 <b>lack (1)</b> 58:7 <b>lasted (1)</b> 18:22 <b>LAW (2)</b> 2:4,10 <b>lawn (1)</b> 33:12 <b>learn (5)</b> 12:20 14:17 15:6,10 55:16 <b>learned (7)</b> 13:4,5,13 30:22 49:6 51:3 52:12 <b>leave (5)</b>	<hr/> <p style="text-align: center;"><b>M</b></p> <hr/> <b>MALCOLM (2)</b> 1:7 2:11 <b>male (1)</b> 32:23 <b>males (1)</b> 32:21 <b>Manhattan (1)</b> 2:6 <b>Maps (2)</b> 40:15,21 <b>March (1)</b>	
<hr/> <p style="text-align: center;"><b>K</b></p> <hr/> <b>Keen's (1)</b> 18:3 <b>kind (2)</b> 8:16 14:10 <b>KINGS (1)</b> 66:5 <b>knew (1)</b> 45:18 <b>know (56)</b> 5:4 7:14,15 8:21,23 9:5 10:7,8 14:7 17:12 18:15,20,23 21:23 22:6,9,11,12 24:24 27:7 28:3,4,5 28:8 33:9,10,12 34:3,5 35:16,21 39:8,9,10,21 40:13 42:19 46:14,15			

11:23 12:3 37:6 <b>months (3)</b> 9:4 18:21 36:15 <b>morning (3)</b> 4:15,17,19 <b>motion (4)</b> 36:6 38:5,17 39:7 <b>motor (3)</b> 30:13,14 33:10	11:16 <b>notified (2)</b> 57:15,16 <b>November (1)</b> 66:19 <b>number (3)</b> 34:16 44:3 65:7 <b>NYPD (2)</b> 46:10,17	21:3 <b>office (14)</b> 2:17 4:12 5:8 7:19 11:14 12:6 22:17 22:20 35:12,20 37:9 38:6 39:12,22 <b>officer (9)</b> 1:8,8 2:12,12 17:23 18:10,10 46:9,14 <b>officers (15)</b> 14:24 25:23 44:12 47:18 48:19 50:8 54:7,15,25 55:17,21 56:13 57:10,23 59:18 <b>offices (1)</b> 1:20 <b>official (1)</b> 58:18 <b>off-the-record (1)</b> 59:23 <b>okay (36)</b> 5:22 6:20 7:17 11:9 11:25 12:19 13:3 13:18 14:9 17:14 23:13 27:6,13,22 28:20 29:24 35:19 36:8,12 37:7 38:9 38:20 39:20 40:12 44:23 45:11 48:9 48:24 50:12 51:22 52:8 53:5 56:17,20 62:6,10 <b>once (2)</b> 22:22,22 <b>open (1)</b> 19:11 <b>opened (1)</b> 59:4 <b>operation (1)</b> 6:7 <b>Order (1)</b> 1:19 <b>original (3)</b> 3:8,16 32:21 <b>originally (1)</b>	49:22 <b>outcome (4)</b> 8:20 34:3 38:25 66:17 <b>outset (1)</b> 49:9
<hr/> <b>N</b>	<hr/> <b>O</b>		<hr/> <b>P</b>
<b>N (8)</b> 2:2,14 3:2 4:2,2,2 64:2 65:15 <b>name (4)</b> 4:8,16,19 32:11 <b>NASS (1)</b> 2:4 <b>natural (1)</b> 38:25 <b>need (3)</b> 36:13 48:14 54:17 <b>neighbor (3)</b> 27:18,20,22 <b>neighbor's (2)</b> 27:15,17 <b>never (5)</b> 16:15 17:7 32:19 41:12 49:3 <b>new (17)</b> 1:2,7,16,22,23 2:6,10 2:11,14,14,20 4:4 4:14,22 7:13 66:4,8 <b>non-conductive (1)</b> 43:24 <b>normally (1)</b> 58:19 <b>Notary (4)</b> 1:23 4:4 64:22 66:7 <b>note (4)</b> 21:6,10,19 22:12 <b>noted (1)</b> 61:11 <b>notes (2)</b> 10:19 27:20 <b>Notice (1)</b>	<b>O (4)</b> 3:2 4:2,2 64:2 <b>oath (2)</b> 3:11 5:5 <b>objection (61)</b> 6:23 7:23,24 9:18,19 10:15 11:2 12:10 12:22 15:4,9 16:6 16:19 17:2 18:4,14 21:15,22 22:4 23:17 27:3 28:16 29:7 32:24 33:16 33:25 37:4,13,17 38:12 39:8,15,25 41:25 42:18 44:9 45:7 46:4,11,20 47:20 48:7,16,22 49:10 50:4,10,16 51:6 52:13 55:5,14 55:18 56:10 57:21 58:4,12 59:21 60:2 60:15 61:2 <b>objections (1)</b> 3:20 <b>observed (1)</b> 13:7 <b>occurred (2)</b> 15:23 51:12 <b>Ocean (11)</b> 16:11,24,25 17:15,16 17:24 40:19,23 49:20,23 51:4 <b>October (2)</b> 1:12 5:24 <b>offer (1)</b>	<b>officer (9)</b> 1:8,8 2:12,12 17:23 18:10,10 46:9,14 <b>officers (15)</b> 14:24 25:23 44:12 47:18 48:19 50:8 54:7,15,25 55:17,21 56:13 57:10,23 59:18 <b>offices (1)</b> 1:20 <b>official (1)</b> 58:18 <b>off-the-record (1)</b> 59:23 <b>okay (36)</b> 5:22 6:20 7:17 11:9 11:25 12:19 13:3 13:18 14:9 17:14 23:13 27:6,13,22 28:20 29:24 35:19 36:8,12 37:7 38:9 38:20 39:20 40:12 44:23 45:11 48:9 48:24 50:12 51:22 52:8 53:5 56:17,20 62:6,10 <b>once (2)</b> 22:22,22 <b>open (1)</b> 19:11 <b>opened (1)</b> 59:4 <b>operation (1)</b> 6:7 <b>Order (1)</b> 1:19 <b>original (3)</b> 3:8,16 32:21 <b>originally (1)</b>	<b>P (3)</b> 2:2,2 3:2 <b>padlock (1)</b> 43:24 <b>page (4)</b> 43:15 65:7,17,23 <b>paperwork (3)</b> 9:24 48:13 49:22 <b>parameters (1)</b> 56:7 <b>part (5)</b> 15:21 21:3 34:20,22 34:25 <b>particular (1)</b> 5:12 <b>parties (3)</b> 1:18 3:6 66:15 <b>party (1)</b> 42:16 <b>pending (1)</b> 4:21 <b>Penn (1)</b> 2:5 <b>people (10)</b> 4:24 14:21,25 24:19 25:16 37:23 41:19 50:2 56:5 59:5 <b>perpetrators (7)</b> 43:25 44:6,14,16 45:5,6,10 <b>person (4)</b> 23:25 46:3 47:4 58:24 <b>phone (5)</b> 22:18,19 23:22 46:6 50:14 <b>photo (3)</b> 59:4,5,8



<b>photograph (8)</b> 13:23 42:7,12,15 54:16,18 59:4,17 <b>photographic (2)</b> 55:17,20 <b>photographs (23)</b> 44:5,8,10,13,19,20 44:21,22 45:5,6,9 49:25 54:2,4,6,19 54:24 55:9 57:6 58:21 60:24 61:21 62:3 <b>photo-array (10)</b> 55:22,23 56:3,3 57:24 58:7,14,18,25 59:10 <b>phrase (1)</b> 58:8 <b>physical (1)</b> 27:11 <b>pick (1)</b> 15:20 <b>picked (4)</b> 12:19 15:12 25:18,19 <b>pickup (1)</b> 33:6 <b>picture (6)</b> 14:4,5,9,10,14,14 <b>pictures (19)</b> 13:19,21,24 14:20,24 15:7,11 24:17,18 25:15,18,22 28:4 44:16 56:7,11,13,16 61:6 <b>place (5)</b> 2:20 4:11,13 58:23 64:11 <b>Plaintiff (2)</b> 1:4 2:4 <b>Plaintiff's (12)</b> 20:8,11 34:9,13 42:4 42:7,11,24 43:3,7 51:18 65:4 <b>plan (1)</b> 38:24 <b>planned (3)</b>	9:10 38:10,17 <b>plate (1)</b> 26:11 <b>Plaza (1)</b> 2:5 <b>please (2)</b> 4:8 42:21 <b>point (11)</b> 13:18 16:4 17:12 19:15,19 28:24 31:21 32:19 37:8 41:6 48:10 <b>police (20)</b> 1:7,8,8 2:11,12,12 11:17 13:16 14:24 23:11,11 26:3 27:19 41:22 55:8 55:10 57:3,14,16 58:19 <b>portion (1)</b> 36:25 <b>power (1)</b> 33:6 <b>practice (2)</b> 7:18 62:24 <b>prepare (1)</b> 10:22 <b>presence (1)</b> 54:7 <b>present (4)</b> 30:19 36:5 57:10 58:25 <b>previous (5)</b> 6:25 7:3 29:14 48:18 54:2 <b>printed (3)</b> 31:25 32:13,15 <b>prior (4)</b> 7:21 8:2 45:25 55:7 <b>privilege (6)</b> 12:10 37:18 38:22 48:8,17 49:11 <b>privileged (7)</b> 37:25 38:13,14,19 39:16 60:3,9 <b>Probably (1)</b>	12:4 <b>procedure (6)</b> 1:20 22:2 58:19,20 61:19 62:5 <b>property (16)</b> 13:9 14:3 15:20 24:20 28:5,15,19 29:4,9,11,17,19,23 29:25 30:6,9 <b>prosecute (2)</b> 7:5 36:15 <b>prosecuted (1)</b> 45:19 <b>prosecuting (3)</b> 6:8 47:19 51:20 <b>prosecution (9)</b> 6:3 18:11 30:20 31:22 47:2,13 49:7 50:9 53:13 <b>prove (3)</b> 35:8 37:11,24 <b>provided (8)</b> 14:24 16:13,15 17:19 21:13 27:23 32:19 40:21 <b>Public (4)</b> 1:23 4:4 64:22 66:7 <b>pull (2)</b> 13:7 27:21 <b>pulled (2)</b> 13:12 24:16 <b>pursuant (1)</b> 1:18 <b>put (9)</b> 21:6,16,18,19 22:9 22:11,12 60:12 61:12 <b>P.M (1)</b> 63:6	5:4 45:17 53:8 54:10 57:12 63:2 <b>quick (2)</b> 20:14 45:12 <b>quote (1)</b> 7:20
<b>R</b>			
<b>R (69)</b> 2:2 3:2 4:1,2,2 5:1 6:1 7:1 8:1 9:1 10:1 11:1 12:1 13:1 14:1 15:1 16:1 17:1 18:1 19:1 20:1 21:1 22:1 23:1 24:1 25:1 26:1 27:1 28:1 29:1 30:1 31:1 32:1 33:1 34:1 35:1 36:1 37:1 38:1 39:1 40:1 41:1 42:1 43:1 44:1 45:1 46:1 47:1 48:1 49:1 50:1 51:1 52:1 53:1 54:1 55:1 56:1 57:1 58:1 59:1 60:1 61:1 62:1 63:1 64:1,2 65:1 66:1,2 <b>randomly (1)</b> 58:23 <b>reach (2)</b> 48:19,21 <b>reaction (1)</b> 21:3 <b>read (7)</b> 8:11 12:20 13:2 35:7 43:15 60:4,7 <b>reason (3)</b> 9:6 28:23 48:4 <b>reasonable (3)</b> 35:10 37:11,25 <b>recall (43)</b> 11:24 12:9 15:17 16:23 21:21 22:23 23:6,18 24:5 25:3,6 25:9 26:13,19,22,25 27:17,18 28:13 30:11,12,13,13			
<b>Q</b>			
<b>question (11)</b> 8:7,9,11 9:20 16:9 27:10 37:22 48:18 60:5,7 61:24 <b>questions (6)</b>			

31:14 33:9,13 36:21 42:12 43:8 44:15,21 45:3,8 47:3 48:5 50:7,17 52:11 53:3,11,15 57:20,22 <b>recap (1)</b> 23:9 <b>receipt (1)</b> 51:9 <b>receipts (7)</b> 30:8 31:24 32:9,11 32:12 49:23 51:4 <b>receive (6)</b> 6:15 10:2 32:17 49:15,19,24 <b>received (19)</b> 9:23 10:20 11:8 24:10 28:17 31:23 40:10,10,25 42:13 43:9 44:20 49:19 49:22,24 51:8,10,13 52:22 <b>receiving (1)</b> 39:23 <b>recess (2)</b> 20:16 45:14 <b>recognize (1)</b> 20:21 <b>recognized (2)</b> 24:22 59:6 <b>recollection (5)</b> 18:17 21:9 25:13 28:10 33:7 <b>record (16)</b> 4:9 20:18 21:6,17,19 21:19 22:7,10,12,13 45:16 59:22,25 60:12 61:13 66:12 <b>records (1)</b> 23:12 <b>recount (1)</b> 26:18 <b>recounting (1)</b> 26:6 <b>recovered (1)</b>	28:6 <b>refer (2)</b> 21:8 22:5 <b>referenced (1)</b> 59:19 <b>referred-to (2)</b> 8:10 60:6 <b>referring (1)</b> 61:15 <b>refers (1)</b> 58:18 <b>refresh (1)</b> 33:7 <b>regarding (2)</b> 22:7 50:9 <b>related (1)</b> 66:14 <b>relation (1)</b> 61:8 <b>relevance (1)</b> 6:22 <b>remember (27)</b> 10:17 11:9,21,25 12:5 16:16 18:21 19:21,24 22:21 23:16 25:11 26:14 26:21,23 32:22 33:2,4 36:17 44:17 44:23 47:6,12 50:15,18 51:2 53:23 <b>remembering (1)</b> 61:5 <b>repeat (2)</b> 8:6,8 <b>report (3)</b> 17:10 26:3 41:22 <b>reporter (7)</b> 8:12 20:7,13 34:15 42:9 43:5 60:8 <b>Reporting (1)</b> 1:21 <b>reports (1)</b> 11:17 <b>representation (2)</b> 41:18 50:2	<b>represented (2)</b> 7:21 28:25 <b>REQUESTED (1)</b> 65:22 <b>reservation (1)</b> 31:25 <b>reserved (1)</b> 3:21 <b>respect (6)</b> 8:2 9:14 26:10 50:20 52:8 61:11 <b>respectfully (1)</b> 38:2 <b>respective (2)</b> 1:18 3:5 <b>result (1)</b> 51:9 <b>results (1)</b> 26:21 <b>retained (1)</b> 65:13 <b>retired (5)</b> 17:22 31:12 46:9,13 46:16 <b>revealed (1)</b> 59:14 <b>review (4)</b> 10:22,25 48:12 49:18 <b>Rhiannon (5)</b> 1:17 2:19 4:10,18 64:15 <b>Richmond (4)</b> 2:17 4:13 5:8 46:9 <b>right (17)</b> 15:14 21:20 22:25 23:3 29:3,5,11,18 32:4 35:24 36:10 40:4 43:13 55:4 58:20,23 61:10 <b>Robert (6)</b> 1:3 2:5 4:20 13:13,15 53:13 <b>role (5)</b> 5:12,14,15,18,23 <b>roles (1)</b> 5:13	<b>ROPER (1)</b> 2:4 <b>rule (1)</b> 11:3 <b>Rules (1)</b> 1:19 <b>running (1)</b> 39:3 <b>R-H-I-A-N-N-O-N...</b> 4:17 <hr/> <b>S</b> <hr/> <b>S (7)</b> 1:8 2:2,13 3:2,2 4:2 65:2 <b>saw (3)</b> 25:4 27:20 56:19 <b>saying (2)</b> 16:11 29:24 <b>says (7)</b> 21:5 22:12 33:5 35:6 43:17 45:4 61:12 <b>scene (5)</b> 14:5,25 44:2 55:22 57:24 <b>sealing (1)</b> 3:6 <b>second (1)</b> 7:19 <b>see (9)</b> 20:24 21:5,7 25:2 30:8 33:21 35:3 42:21 46:3 <b>sense (1)</b> 62:18 <b>sentences (1)</b> 43:16 <b>September (1)</b> 52:4 <b>service (1)</b> 3:15 <b>set (2)</b> 66:11,18 <b>sex (1)</b> 6:19 <b>shed (12)</b>
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13:8,11,12,25,25 14:2 24:20,20 28:9 28:15 33:13 43:23 <b>sheet (4)</b> 11:14 20:10 31:2 32:21 <b>short (2)</b> 20:16 45:14 <b>show (4)</b> 20:3,25 42:10 54:6 <b>showed (10)</b> 25:22 54:4,24 55:9 56:12,16,24 59:5,8 59:17 <b>showing (2)</b> 17:15 20:19 <b>shown (7)</b> 25:15 53:25 54:16 56:8 60:25 61:22 62:3 <b>signed (3)</b> 3:9,11,14 <b>similar (1)</b> 58:22 <b>sit (2)</b> 59:15 61:10 <b>six (3)</b> 36:15 56:4 58:23 <b>smiling (1)</b> 14:10 <b>solely (1)</b> 52:21 <b>somebody (6)</b> 18:15 25:18 42:16 55:13 57:18 58:24 <b>sorry (7)</b> 19:23 37:14 41:4 42:2 51:7 52:3 55:6 <b>sort (1)</b> 13:22 <b>sorts (1)</b> 33:11 <b>source (6)</b> 9:17 16:16,20,22 18:2 31:19 <b>speak (10)</b>	18:9 22:14 23:19,24 30:25 31:4 40:2 46:6 47:25 48:14 <b>speaking (3)</b> 12:5 50:6,7 <b>Special (2)</b> 5:21 6:14 <b>specific (6)</b> 6:10,12 38:24 44:24 45:8 48:4 <b>specifically (3)</b> 22:6 44:15 61:20 <b>specified (1)</b> 64:11 <b>specify (1)</b> 54:17 <b>spoke (3)</b> 17:22 22:21 50:15 <b>spoken (2)</b> 45:22 54:19 <b>squib (1)</b> 43:14 <b>SS (1)</b> 66:4 <b>stands (1)</b> 35:9 <b>starting (2)</b> 43:20,21 <b>state (5)</b> 1:23 4:4,8 66:4,8 <b>statement (13)</b> 13:16 15:13,18,19,22 16:17,20 18:3 27:4 27:9,9 29:15 40:18 <b>statements (3)</b> 27:16,18 40:14 <b>Staten (3)</b> 2:20 4:14 15:23 <b>STATES (1)</b> 1:2 <b>stations (3)</b> 31:24 32:10,12 <b>sticks (1)</b> 30:14 <b>STIPULATED (2)</b> 3:4,19	<b>stolen (5)</b> 29:4,11,25 30:11 33:8 <b>stopped (1)</b> 9:7 <b>story (5)</b> 23:10 25:13,25 26:2 26:4 <b>Street (2)</b> 1:21 2:13 <b>strict (1)</b> 62:18 <b>stuck (1)</b> 33:10 <b>stuff (1)</b> 33:12 <b>Stuyvesant (2)</b> 2:20 4:13 <b>Subscribed (1)</b> 64:18 <b>subsequent (1)</b> 25:19 <b>substance (5)</b> 8:3 15:18 23:7 32:7 58:9 <b>substantive (3)</b> 51:2,14 52:19 <b>Suite (2)</b> 1:21 2:5 <b>sum (4)</b> 8:3 15:18 23:7 32:7 <b>summary (1)</b> 43:17 <b>supervisor (2)</b> 10:4,11 <b>supervisors (1)</b> 10:6 <b>sure (5)</b> 21:25 36:3 43:11 55:25 59:20 <b>surveillance (1)</b> 28:2 <b>sworn (5)</b> 3:9 4:3 64:5,18 66:11 <b>synopsis (2)</b> 13:4,17	<b>T</b> <b>T (7)</b> 3:2,2 4:2 64:2 65:2 66:2,2 <b>take (6)</b> 20:14 29:22 30:6,22 44:5 45:12 <b>taken (9)</b> 1:17 14:5,7 20:17 24:17 33:18 43:25 44:10 45:15 <b>talk (1)</b> 47:17 <b>talking (3)</b> 27:11 54:18 56:11 <b>target (1)</b> 58:22 <b>tax (1)</b> 44:3 <b>technically (2)</b> 62:22,24 <b>tell (4)</b> 6:6 8:3 23:5 32:7 <b>telling (1)</b> 50:25 <b>terms (3)</b> 36:18 50:23 62:20 <b>testified (12)</b> 4:5 14:23 40:3,9 42:13 47:24 50:12 52:10,23 54:14 60:18 61:17 <b>testify (1)</b> 64:5 <b>testifying (2)</b> 53:11,15 <b>testimony (7)</b> 5:5 17:21 29:15 58:6 64:6,10 66:13 <b>Thank (4)</b> 5:3 42:22 63:4,5 <b>thing (1)</b> 14:11 <b>things (1)</b> 33:14
---	---	---	---

<b>think (4)</b> 17:23 27:10 38:23 60:23 <b>thinks (1)</b> 55:12 <b>thought (7)</b> 19:9 23:14 25:17 27:4 29:18 56:25 60:18 <b>time (26)</b> 1:13 3:21 10:11 14:6 16:12 17:16,25 18:25 19:19 24:3,4 25:24 28:24 30:18 30:19 31:12,23 38:7 39:4 40:15,24 41:14,15 44:5 48:10 64:10 <b>times (2)</b> 40:14 50:15 <b>TIMOTHY (2)</b> 1:8 2:12 <b>today (2)</b> 59:15 61:10 <b>today's (1)</b> 10:23 <b>told (3)</b> 23:10 29:19 33:17 <b>tools (1)</b> 33:12 <b>Tortora (29)</b> 1:3 2:5 4:21,24 6:4 6:21,24 9:15 13:13 13:15,23 14:4 15:13 16:11 17:24 23:14 25:20 27:2 29:15,21 30:6 31:10,17 33:19 47:2,13 48:24 53:13 57:2 <b>Tour (68)</b> 1:17 2:19 4:1,10,15 5:1 6:1 7:1 8:1 9:1 10:1 11:1 12:1 13:1 14:1 15:1 16:1 17:1 18:1 19:1 20:1 21:1	22:1 23:1 24:1 25:1 26:1 27:1 28:1 29:1 30:1 31:1 32:1 33:1 34:1 35:1 36:1 37:1 38:1 39:1 40:1 41:1 42:1 43:1 44:1 45:1 46:1 47:1 48:1 49:1 50:1 51:1 52:1 53:1 54:1 55:1 56:1 57:1 58:1 59:1 60:1 61:1 62:1 63:1 64:1,15 65:1 66:1 <b>traffic (1)</b> 40:22 <b>transcript (2)</b> 64:9,9 <b>trial (2)</b> 3:21 8:22 <b>Tricia (7)</b> 7:2,6,10 13:5,6 25:15 25:17 <b>tried (1)</b> 18:15 <b>truck (14)</b> 13:7,10,25 24:16,17 24:18 26:10,12,15 27:21,23 28:3 33:7 44:21 <b>true (3)</b> 6:20 64:9 66:12 <b>truth (1)</b> 64:5 <b>try (1)</b> 18:13 <b>turn (2)</b> 62:21,22 <b>turned (1)</b> 11:12 <b>twenty (1)</b> 52:3 <b>two (2)</b> 32:21 43:15 <b>type (1)</b> 6:12 <b>typically (2)</b> 47:17,21	<hr/> <b>U</b> <hr/> <b>U (2)</b> 3:2 4:2 <b>ultimate (1)</b> 34:3 <b>understand (1)</b> 16:8 <b>understanding (12)</b> 55:3,7,15 56:15,21 57:4,13 59:3,3 62:14,16,19 <b>understood (1)</b> 62:10 <b>UNITED (1)</b> 1:2 <b>unquote (1)</b> 7:20 <b>unsigned (1)</b> 3:13 <b>Usually (2)</b> 10:6 56:4 <hr/> <b>V</b> <hr/> <b>various (5)</b> 9:24 11:17 13:11 33:11 47:16 <b>vehicle (1)</b> 31:11 <b>versus (1)</b> 4:24 <b>victim (4)</b> 7:7 10:13 29:3 30:2 <b>Victims (2)</b> 5:21 6:14 <b>video (6)</b> 16:14,15 17:14 32:18 41:6,8 <b>view (2)</b> 15:2 57:25 <b>viewed (1)</b> 43:9 <b>Vincent (1)</b> 7:6 <b>violence (2)</b> 6:18,22 <b>vis-a-vis (1)</b>	36:18 <b>VMS (1)</b> 1:6 <hr/> <b>W</b> <hr/> <b>W (1)</b> 2:9 <b>waived (1)</b> 3:8 <b>want (1)</b> 8:13 <b>wanted (1)</b> 48:11 <b>washer (1)</b> 33:6 <b>way (2)</b> 46:18 66:16 <b>wedding (5)</b> 25:16,23 56:16,24 57:6 <b>week (1)</b> 11:22 <b>weeks (1)</b> 9:4 <b>went (4)</b> 9:8 18:23 24:19 32:16 <b>WHEREOF (1)</b> 66:18 <b>witness (21)</b> 1:16 3:9,15,17 4:3 8:13 16:7 20:19 22:24 37:14 42:2 45:4 46:17,19 51:7 55:6 58:15 63:7 66:10,13,18 <b>witnesses (1)</b> 50:8 <b>wooden (3)</b> 43:20,22,23 <b>words (1)</b> 23:6 <b>writing (1)</b> 13:23 <b>written (1)</b> 35:15
---	--	--	--

<b>wrote (1)</b> 59:12	1:22 <b>12:18 (1)</b> 63:6	3:15 <b>30th (1)</b> 66:19	
<b>X</b>	<b>12:30 (1)</b> 40:19	<b>30-30 (3)</b> 39:4,6,14	
<b>X (4)</b> 1:3,10 65:2,15	<b>12:50 (1)</b> 40:19	<b>34 (1)</b> 65:9	
<b>Y</b>	<b>130 (2)</b> 2:20 4:13	<b>4</b>	
<b>year (2)</b> 5:16 7:8	<b>14 (1)</b> 2:5	<b>4 (5)</b> 42:25 43:4,7 65:11	
<b>York (16)</b> 1:2,7,16,22,24 2:6,10 2:11,14,14,20 4:4 4:14,22 66:4,8	<b>15-CV-3717 (1)</b> 1:6	65:18	
<b>Z</b>	<b>16 (1)</b> 1:21	<b>4th (2)</b> 52:2,6	
<b>ZACHARY (1)</b> 2:9	<b>18th (1)</b> 52:4	<b>42 (1)</b> 65:10	
<b>Zelman (31)</b> 2:6 4:7,20 11:6 12:12 16:4 20:14,18 21:16 34:7 37:19 38:2,14 39:17,20 42:3,23 45:12,16 48:9 49:12 52:17 53:5 54:11,13 56:12 59:25 60:4 62:10 63:3 65:18	<b>2</b>	<b>43 (1)</b> 65:11	
<b>1</b>	<b>2 (3)</b> 34:9,13 65:9	<b>5</b>	
<b>1 (5)</b> 3:16 20:8,11 51:19 65:8	<b>20 (2)</b> 64:19 65:8	<b>52 (1)</b> 42:24	
<b>1-3 (2)</b> 1:8 2:13	<b>2004 (1)</b> 2:5	<b>53 (1)</b> 65:19	
<b>10:40 (1)</b> 1:13	<b>2009 (2)</b> 5:9,10	<b>54 (1)</b> 65:18	
<b>100 (1)</b> 2:13	<b>2010 (1)</b> 5:24	<b>6</b>	
<b>10007 (1)</b> 2:14	<b>2014 (12)</b> 5:2,10,15,19 7:9 9:11 18:24 19:3,8,8,13 52:6	<b>62 (1)</b> 65:19	
<b>10123 (1)</b> 2:6	<b>2015 (2)</b> 4:25 9:13	<b>7</b>	
<b>10301 (2)</b> 2:20 4:14	<b>2016 (1)</b> 5:25	<b>71 (2)</b> 34:18,20	
<b>11241 (1)</b>	<b>2017 (2)</b> 1:12 66:19	<b>73 (2)</b> 20:4,20	
	<b>27 (1)</b> 1:12	<b>9</b>	
	<b>3</b>	<b>907 (1)</b> 1:21	
	<b>3 (4)</b> 42:4,8,11 65:10	<b>917500 (1)</b> 44:4	
	<b>30 (1)</b>	<b>918 (1)</b> 21:3	